

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN F. BEAL and U.S. POSTAL SERVICE,
POST OFFICE, Coppel, TX

*Docket No. 02-481; Submitted on the Record;
Issued August 6, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether appellant is entitled to more than a three percent permanent impairment to her left upper extremity for which she received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for a left shoulder contusion and left hip contusion. By decision dated December 5, 1997, the Office issued appellant a schedule award for a five percent permanent loss of use of the left lower extremity.

On September 19, 2000 appellant filed a claim for a schedule award.

By letters dated November 9 and December 5, 2000, the Office requested that appellant's treating physician, Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, use the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994) to assess the extent of appellant's left upper extremity and lower extremity impairment.

In a report dated December 12, 2000, which was received by the Office on December 21, 2000, Dr. Shade used the A.M.A., *Guides* (4th ed. 1994), to determine that appellant had a 3 percent permanent impairment to her upper extremity and a 13 percent impairment to her lower extremity.

By decision dated January 12, 2001, the Office stated that appellant did not submit any evidence of a permanent impairment to her left shoulder and therefore she failed to establish her entitlement to a schedule award.

In a report dated June 19, 2001, using the A.M.A., *Guides* (5th ed. 1995), the district medical adviser agreed that appellant had a three percent impairment to the left upper extremity. The district medical adviser stated that Dr. Shade did not give the measurements of the shoulder motion that were responsible for the three percent permanent impairment. The district medical adviser stated that, because Dr. Shade provided the Office with impairment data on many

claimants and he was sure that Dr. Shade was familiar with the requirements of the A.M.A., *Guides*, he did not think it was necessary to obtain the motion measurements prior to awarding the three percent permanent impairment of the left upper extremity.

By decision dated July 16, 2001, the Office issued appellant a schedule award for a three percent loss of use of the left upper extremity.

The Board finds that the case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

In this case, neither Dr. Shade nor the district medical adviser explained how they used the A.M.A., *Guides* to obtain their rating of 3 percent of appellant's left upper extremity. They did not explain what factual data they used and they did not describe which table or page number of the A.M.A., *Guides* they used to obtain their figures. Their opinions are therefore of diminished probative value and preclude the Board's review of the Office's decision. Moreover, while appellant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence.⁴ The case should therefore be remanded for the Office to obtain clarification from Dr. Shade as to how he used the A.M.A., *Guides* to obtain his estimates of impairment for appellant's upper left extremity and request Dr. Shade to refer to the applicable table and page number of the A.M.A., *Guides*. On remand, after any further development it deems necessary, the Office should issue a *de novo* decision.

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.404.

³ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 306, 308 (1986).

⁴ *See Lourdes Davila*, 45 ECAB 139, 143 (1993).

The July 16, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development in conformance with this decision.

Dated, Washington, DC
August 6, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member