

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REGINA A. HARRIS and U.S. POSTAL SERVICE,  
POST OFFICE, Atlanta, GA

*Docket No. 01-2128; Submitted on the Record;  
Issued July 9, 2002*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a nine percent permanent impairment of the left upper extremity for which she received a schedule award.

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

The Office of Workers' Compensation Programs accepted that appellant sustained a cervical and upper thorax strain, impingement syndrome in the right shoulder, and left rotator cuff bursitis due to a work-related incident which occurred on May 22, 1991. By decision dated January 23, 1998, appellant received a schedule award for a 19 percent permanent impairment of her right upper extremity. By decision dated April 14, 1999, the Office granted appellant a schedule award for a 14 percent permanent loss of use of her left upper extremity. The period of the award ran from September 5, 1995 through October 23, 1996. By decision dated January 16, 2001, an Office hearing representative set aside the April 14, 1999 decision on the basis that both the Office referral physician, Dr. Harold Alexander, a Board-certified orthopedic surgeon, and the Office medical adviser failed to provide a well-rationalized opinion as to how the impairment rating resulting from pain was derived and remanded the case to the Office to obtain further clarification from Dr. Alexander. The hearing representative additionally noted that the schedule award had already been paid by the Office. By decision dated May 8, 2001, the Office granted appellant a schedule award for a nine percent permanent loss of use of her left upper extremity. The period of the award ran from March 26 through October 8, 1999.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.404 of the implementing regulation,<sup>2</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Office has adopted the American Medical

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (2000).

Association, *Guides to the Evaluation of Permanent Impairment*<sup>3</sup> as a standard for determining the percentage of impairment.<sup>4</sup>

In his original report of March 26, 1999, Dr. Alexander set forth the results of his examination and opined that appellant had a total impairment rating of 14 percent of her left upper extremity which was comprised of a 9 percent impairment due to loss of motion and 5 percent due to pain. Pursuant to the Office's directive of January 16, 2001, Dr. Alexander re-examined appellant on March 30, 2001. In his report of that date, Dr. Alexander stated that the range of motion of appellant's left shoulder had not changed appreciably since the last evaluation. Appellant described having numbness and tingling in her hand, difficulty sleeping and pain at all times. Appellant was noted to have similar range of motion to her previous examination of March 1999. She had marked tenderness to light touch or deep compression anywhere around the shoulder. Appellant had a positive Tinel's sign and a positive Phalen's test. No evidence of atrophy or sensory loss was noted. Hand function was described as adequate. Range of motion findings were noted as: 70 degrees retained internal rotation; 90 degrees retained external rotation; 140 degrees retained forward elevation; 30 degrees retained backward elevation; 100 degrees for abduction; and 30 degrees for adduction.

In an April 12, 2001 report, Dr. Alexander provided an impairment rating of 14 percent for appellant's left upper extremity. He advised that there was a nine percent impairment rating for loss of motion. This was comprised of four percent loss of abduction, one percent loss of adduction, one percent for internal rotation, zero percent for external rotation and three percent for forward elevation or flexion. The additional five percent was given for pain. In an April 20, 2001 report, Dr. Alexander advised that the five percent impairment rating for pain was a subjective evaluation based on his experience which did not involve any reference to the A.M.A., *Guides* (fourth edition).

The Board notes that appropriate impairment values can be obtained by utilizing the appropriate figures under the A.M.A., *Guides* to Dr. Alexander's findings. Dr. Alexander found the following impairment ratings for appellant's range of motion: abduction of 100 degrees equated to a 4 percent impairment;<sup>5</sup> adduction of 30 degrees equated to a 1 percent impairment;<sup>6</sup> internal rotation of 70 degrees equated to a 1 percent impairment;<sup>7</sup> external rotation of 90

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<sup>3</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2000).

<sup>4</sup> *James R. Bradford*, 48 ECAB 320, 324 (1997); *Henry G. Flores, Jr.*, 43 ECAB 901 (1992). The Board notes that, in this case, the Office based its May 8, 2001 decision on the fourth edition of the A.M.A., *Guides*. However, under FECA Bulletin 01-5 (issued January 29, 2001), any new schedule award decision issued after February 1, 2001 must be based on the fifth edition of the A.M.A., *Guides*. A comparison of the fourth and fifth edition of the A.M.A., *Guides* shows that the section for calculating schedule awards for the relevant upper extremity impairments of this case remains unchanged. Therefore, it was harmless error for the Office to use the fourth edition, rather than the fifth edition of the A.M.A., *Guides* to calculate a schedule award in this case.

<sup>5</sup> A.M.A., *Guides*, Figure 41, p. 3/44 (4<sup>th</sup> ed. 1993); A.M.A., *Guides*, Figure 16-43, p. 477 (5<sup>th</sup> ed. 2000).

<sup>6</sup> *Id.*

<sup>7</sup> A.M.A., *Guides*, Figure 44, p. 3/45 (4<sup>th</sup> ed. 1993); A.M.A., *Guides*, Figure 16-46, p. 479 (5<sup>th</sup> ed. 2000).

degrees equated to a 0 percent impairment;<sup>8</sup> flexion of 140 degrees equated to a 3 percent impairment;<sup>9</sup> and extension of 30 degrees equated to a 1 percent impairment.<sup>10</sup> Accordingly, the range of motion impairment values totaled 10 percent, as opposed to the 9 percent Dr. Alexander found, as it appeared Dr. Alexander inadvertently forgot to provide an extension calculation in his April 12, 2001 report.

Dr. Alexander also provided a five percent impairment due to pain which he explained, in his April 20, 2001 report, was purely a subjective evaluation and not based on the A.M.A., *Guides*. The Office specifically requested Dr. Alexander, on April 12, 2001, to clarify how he arrived at the impairment rating for pain using the A.M.A., *Guides*. Although Dr. Alexander did not follow the Office's directives, the Board notes that his findings of March 30, 2001 are sufficient for an Office medical adviser to render an impairment rating for pain. The Office did not seek an opinion from an Office medical adviser. The Board will set aside the Office's May 8, 2001 decision and remand the case for further development of the medical evidence. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's schedule award claim for her left upper extremity.

The May 8, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC  
July 9, 2002

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> *Id.*

<sup>9</sup> A.M.A., *Guides*, Figure 38, p. 3/43 (4<sup>th</sup> ed. 1993); A.M.A., *Guides*, Figure 16-40, p. 476 (5<sup>th</sup> ed. 2000).

<sup>10</sup> *Id.*