

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERMAINE RAMSEY and U.S. POSTAL SERVICE,
JAMAICA AIR FACILITY, New York, NY

*Docket No. 02-188; Submitted on the Record;
Issued July 17, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a six percent permanent impairment of the right arm.

On July 5, 1995 appellant, then a 37-year-old letter carrier, was unloading parcels from her postal vehicle to a hand truck when she developed pain in her right shoulder. She filed a claim for a right arm sprain. She stopped working on July 12, 1995. The Office of Workers' Compensation Programs accepted appellant's claim for a sprain of the right shoulder. Appellant received continuation of pay for the period July 12 through August 15, 1995. The Office began payment of temporary total disability compensation effective August 27, 1995. Appellant underwent surgery on May 20, 1998 for debridement of a rotator cuff tear, synovectomy, bursectomy, partial acromioplasty, and release of the coracoacromial ligament. Appellant returned to limited-duty work on March 1, 1999.

On April 9, 2001 appellant filed a claim for a schedule award. In a July 11, 2001 decision, the Office issued a schedule award for a six percent permanent impairment of the right arm.¹

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

The schedule award provision of the Act² and its implementing regulation³ 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

¹ The Board notes that the schedule award was initially issued on April 26, 2001 but was reissued on July 11, 2001.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In an April 9, 2001 report, Dr. Andrew D. Brown, a Board-certified orthopedic surgeon, reported that appellant's ranges of motion in the shoulder were as follows: flexion, 160 degrees; extension 45 degrees; abduction, 155 degrees; adduction, 30 degrees; internal rotation, 35 degrees; and external rotation, 70 degrees. Dr. Brown indicated that appellant had a one percent permanent impairment for loss of flexion, one percent permanent impairment for loss of extension, one percent permanent impairment for loss of abduction, one percent permanent impairment for loss of adduction, three percent permanent impairment for loss of internal rotation and no permanent impairment for external rotation. He concluded that appellant had an eight percent permanent impairment due to loss of motion. He stated that appellant had no permanent impairment for loss of strength, pain or other disorders.

In an April 24, 2001 memorandum, an Office medical adviser indicated that appellant had a one percent permanent impairment for loss of flexion, one percent permanent impairment for loss of extension, one percent permanent impairment for loss of abduction, one percent permanent impairment for loss of adduction and three percent permanent impairment for loss of internal rotation. However, he concluded that appellant had a six percent permanent impairment of the right arm when the calculations he used showed that appellant had a seven percent permanent impairment of the right arm due to loss of motion. Additionally, the A.M.A., *Guides* shows that 30 degrees of internal rotation equals a 4 percent permanent impairment of the arm while 40 degree of internal rotation equals a 3 percent permanent impairment of the arm.⁴ Dr. Brown concluded that appellant, with 35 degrees of internal rotation, had a 4 percent permanent impairment while the Office medical adviser concluded that appellant had a 3 percent permanent impairment of the arm.⁵ The Office medical adviser offered no explanation on why he chose a lower permanent impairment figure for appellant's permanent impairment due to loss of internal rotation of the shoulder. The case must therefore be remanded to the Office for a correct and proper calculation of appellant's permanent impairment based on Dr. Brown's report, with an explanation of the permanent impairment calculation made by the Office medical adviser.⁶

⁴ A.M.A., *Guides*, p. 479, Figure 16-46.

⁵ The Board notes that, while Dr. Brown used the fourth edition of the A.M.A., *Guides*, (4th ed. 1993; p. 45, Figure 44) the figures for permanent impairment due to loss of internal and external rotation of the shoulder are essentially the same in both the fourth and fifth editions of the A.M.A., *Guides*.

⁶ The Board notes that appellant filed a claim for recurrence of disability beginning September 7, 2001, which the Office denied in a January 23, 2002 decision. While that decision was issued after the filing of appellant's appeal to the Board on October 9, 2001, the issue of recurrence of disability differs from the issue of a schedule award. An Office decision on recurrence of disability will not affect the Board's decision on the extent of appellant's permanent impairment. The Office's January 23, 2002 decision, therefore, is not null and void even though it was issued after the filing of an appeal with the Board. *Douglas Billings*, 41 ECAB 880 (1990).

The decision of the Office of Workers' Compensation Programs, dated July 11, 2001, is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
July 17, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member