

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUSTIN C. BARTON, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Waltham, MA

*Docket No. 02-1550; Submitted on the Record;
Issued November 22, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has shown that he is entitled to greater than a four percent impairment to his right upper extremity, for which he received a schedule award.

On June 16, 1999 appellant, then a 43-year-old letter carrier, filed a notice of occupational disease and claim for compensation, alleging that he suffered from persistent numbness in his right hand and fingers extending up to his right elbow as a result of his federal duties. By letter dated September 21, 1999, the Office of Workers' Compensation Programs accepted appellant's case for aggravation of C7 radiculopathy (right).

On January 10, 2001 appellant filed a claim for a schedule award. In support thereof, he submitted a March 14, 2001 medical report wherein Dr. Elizardo P. Carandang, a Board-certified physiatrist, stated that appellant was "at his medical endpoint" for which he assigned an approximate date of October 2000. Dr. Carandang found that appellant "sustained a six percent impairment of the whole person on the basis of his unoperated, stable, medically documented injury with finding of a herniated disc with radiculopathy." In his report, he also noted that appellant "has some numbing sensation particularly along the dorsal aspect of his right hand, especially the thumb and index finger," that "there has been no notable increased weakness noted although he complains that, at times, he drops some objects from his right hand," and that he had "functional range of motion in both shoulders, elbows, wrists and fingers" but that he has "some altered sensation along his right thumb and index finger." Dr. Carandang noted that he had functional grip bilaterally, that the right triceps jerk was slightly diminished and that "no incoordination was noted."

On April 30, 2001 the Office medical adviser, Dr. George L. Cohen, reviewed the aforementioned report and applied the American Medical Association, *Guides to the Evaluation*

of *Permanent Impairment* (5th ed.) to determine the impairment of the right upper extremity. He noted:

“Using Table 16-13, page 489, the maximum upper extremity impairment due to sensory deficit or pain when the C7 nerve root is involved is five percent. Table 16-10, Grade 2, page 482 allows 80 percent for pain or abnormal sensation which may prevent some activities. Eighty percent of five percent results in four percent impairment of the right upper extremity. There is no additional impairment for weakness or for abnormal motion. There is no impairment of the left upper extremity.”

Dr. Cohen noted that the date of maximum medical improvement was October 2000, the date appellant’s physician indicated that further improvement would not occur.

By decision dated May 15, 2001, the Office issued a schedule award for a four percent of the right upper extremity.

The Board finds that appellant has no more than the four percent impairment of his right upper extremity for which he received a schedule award.

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing federal regulation,² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ 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.⁴

In this case, the Office medical adviser properly determined the extent of appellant’s upper extremity impairment using the A.M.A., *Guides* (5th ed. 2001). Appellant’s physician, Dr. Carandang, opined that appellant sustained a six percent impairment of the whole person; however, he failed to apply the A.M.A., *Guides* or state the impairment with regard to the upper extremity, as required by the Act. Based on Dr. Carandang’s report, the Office medical adviser properly applied the A.M.A., *Guides* and determined that appellant had a four percent impairment to his right upper extremity. The percentage of impairment he obtained was consistent with Tables 16-10 and 16-13, found at pages 482 and 489 of the A.M.A., *Guides*. The

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ 5 U.S.C. § 8107(c)(19).

⁴ See 20 C.F.R. § 10.404 (1999).

Office medical adviser's opinion is clear and precise. Accordingly, the Office properly issued a schedule award based on a four percent impairment of the right upper extremity.

The decision of the Office of Workers' Compensation Programs dated May 15, 2001 is affirmed.

Dated, Washington, DC
November 22, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member