

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS J. CARNEY and U.S. POSTAL SERVICE, AIRPORT
MAIL CENTER, JOHN F. KENNEDY AIRPORT, Jamaica, NY

*Docket No. 02-1563; Submitted on the Record;
Issued November 26, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant had more than a 14 percent permanent impairment of the right upper extremity for which he received a schedule award.

On October 3, 2000 appellant, then a 41-year-old clerk, sustained a right shoulder strain in the performance of duty.

In a report dated July 20, 2001, Dr. Daniel O'Connor diagnosed bilateral carpal tunnel syndrome and impingement of the right shoulder. He stated that appellant had a 60 percent permanent impairment of the right shoulder due to marked defect in anterior flexion and external and internal rotation and a rotator cuff tear as evidenced by a magnetic resonance imaging scan.

In a worksheet dated November 26, 2001, Dr. Mark S. McMahon indicated that appellant had a 36 percent total permanent impairment of the right shoulder according to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) based on abduction of 90 degrees, external rotation of 0 degrees, flexion of 90 degrees, and extension of 0 degrees.¹

In a report dated December 7, 2001, the Office's district medical advisor determined that appellant had a 14 percent permanent impairment of the right upper extremity based on the findings in Dr. McMahon's November 26, 2001 report. He determined that appellant had a four percent permanent impairment based on abduction of 90 degrees (Table 16-43 at page 476), a one percent impairment based on adduction of 20 degrees (Table 16-43 at page 477), a six percent impairment based on flexion of 90 degrees (Table 16-40 at page 476), and a three percent impairment based on extension of zero degrees (Table 16-40 at page 476).

¹ Dr. McMahon provided a list of pages and figures in the fourth edition of the A.M.A., *Guides* that he used in making his determination of appellant's impairment. However, the references he gave do not correspond to the fourth edition of the A.M.A., *Guides*. Additionally, he did not correctly apply his findings to the applicable figures in the A.M.A., *Guides*.

In a decision dated December 28, 2001, the Office granted appellant a schedule award for 43.68 weeks based on a 14 percent permanent impairment of the right shoulder.

The Board finds that appellant has no more than a 14 percent permanent impairment of the right upper extremity for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence.³ Appellant thus bears the burden to establish that he has more than a 14 percent permanent impairment of the right upper extremity causally related to his October 3, 2000 employment injury.

The schedule award provisions of the Act⁴ and its implementing regulation⁵ 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.

In a report dated July 20, 2001, Dr. O'Connor diagnosed bilateral carpal tunnel syndrome and impingement of the right shoulder. He stated that appellant had a 60 percent permanent impairment of the right shoulder due to marked defect range of motion consisting of anterior flexion and external and internal rotation and a rotator cuff tear as evidenced by a magnetic resonance imaging scan. However, Dr. O'Connor did not provide any specific measurements of appellant's range of motion. Nor did he explain, by reference to the A.M.A., *Guides*, how he determined the 60 percent impairment rating. Therefore, his report is not sufficient to establish appellant's degree of permanent impairment of the right shoulder.

In a worksheet dated November 26, 2001, Dr. McMahon indicated that appellant had a 36 percent total permanent impairment of the right shoulder according to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) based on abduction of 90 degrees, external rotation of 0 degrees, flexion of 90 degrees, and extension of 0 degrees. However, as noted above, Dr. McMahon did not correctly apply the A.M.A., *Guides* in making his determination of appellant's permanent impairment. Because Dr. McMahon did not correctly determine the percentage of impairment according to the

² 5 U.S.C. §§ 8101-8193.

³ See *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

A.M.A., *Guides*, it was proper for the Office medical adviser to apply the A.M.A., *Guides* to the findings reported by Dr. McMahon on examination.⁶

In a report dated December 7, 2001, the Office's district medical advisor correctly determined that appellant had a 14 percent permanent impairment of the right upper extremity based on the findings in Dr. McMahon's November 26, 2001 report. He determined that appellant had a four percent permanent impairment based on abduction of 90 degrees (Table 16-43 at page 477 of the fifth edition of the A.M.A., *Guides*), a one percent impairment based on adduction of 20 degrees (Table 16-43 at page 477), a six percent impairment based on flexion of 90 degrees (Table 16-40 at page 476), and a three percent impairment based on extension of zero degrees (Table 16-40 at page 476). The Office medical adviser then correctly combined the separate impairment percentages by means of the Combined Values Chart at page 604 for a 14 percent permanent impairment of the right upper extremity. As the district medical adviser's report provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence⁷ and the Office properly granted appellant a schedule award based on a 14 percent permanent impairment of the right upper extremity.

The decision of the Office of Workers' Compensation Programs dated December 28, 2001 is affirmed.

Dated, Washington, DC
November 26, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *Lena P. Huntley*, 46 ECAB 643, 646 (1995).

⁷ See *Michael C. Norman*, 42 ECAB 768, 778 (1991); *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).