

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RANDALL O. TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Brownsville, TN

*Docket No. 03-64; Submitted on the Record;
Issued April 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant is entitled to greater than a one percent permanent impairment of the right upper extremity for which he received a schedule award.

On May 8, 2000 appellant, then a 50-year-old rural carrier, sustained an injury to his right shoulder while in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for right shoulder rotator cuff tear and the required surgery. Appellant was paid appropriate compensation and benefits.

In a March 14, 2001¹ report, Dr. Phillip Aronoff, Board-certified in internal medicine and appellant's treating physician, indicated that appellant had an impairment of 10 percent to the right upper extremity and 6 percent to the body. He indicated that appellant could return to full duty on March 19, 2001 and was discharged from treatment on March 14, 2001.

On April 10, 2001 appellant filed a claim for a schedule award.

On May 2, 2001 the Office medical adviser opined that appellant had a one percent impairment to the right upper extremity. He indicated that per section 16.8(c) page 509 and Table 16-35, page 510 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² slight weakness of internal rotation, to two percent for right upper extremity. He further opined that "in this case, 10 percent inappropriate."

By letters dated May 3 and July 11, 2001, the Office requested additional information from Dr. Aronoff regarding his impairment rating.³

¹ The report is dated March 14, 2001, however, it could be April 10, 2001. The writing is unclear.

² A.M.A., *Guides* (5th ed. 2001).

³ The record reflects that Dr. Aronoff did not provide the additional information.

By decision dated September 4, 2001, the Office awarded appellant compensation for permanent partial impairment of the right upper extremity. The award ran for weeks from March 15 to April 5, 2001.

By decision dated September 4, 2001, the Office granted appellant a schedule award for 3.12 weeks from March 15 to April 5, 2001, based upon a 1 percent permanent impairment of the right upper extremity.

By letter dated September 10, 2001, appellant, through his representative, requested a hearing, which was held on March 26, 2002. At the hearing, appellant's representative submitted the deposition of Dr. Timothy H. Krahn, a Board-certified orthopedic surgeon and appellant's surgeon, taken on January 14, 2002. In his deposition, Dr. Krahn indicated that he performed an arthroscopy on appellant on August 31, 2000. He noted that he had reviewed appellant's records, the functional capacity evaluation and the A.M.A., *Guides*.⁴ He explained that he had originally opined that appellant had a 10 percent impairment of the right upper extremity and 6 percent to the body. He referred to Table 16-35 of the fifth edition of the A.M.A., *Guides* and indicated that his first rating was based on the fourth edition of the A.M.A., *Guides*⁵ and the new edition changed his rating. He indicated that, under the new edition, appellant would have a two percent impairment of the upper extremity and abduction of one percent and external rotation of one percent. Thus, he opined that appellant would have a four percent impairment of the upper extremity, for a two percent impairment of the body as a whole.

In a September 6, 2002 decision, the hearing representative affirmed the September 4, 2001 decision finding that appellant had a one percent permanent impairment of the right upper extremity.

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

The schedule award provisions of the Federal Employees' Compensation Act⁶ and its implementing regulation⁷ 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.⁸

⁴ See *supra* note 2.

⁵ A.M.A., *Guides* (4th ed. 1993).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999).

⁸ A.M.A., *Guides* (5th ed. 2001).

In this case, appellant's physician, Dr. Krahn,⁹ originally used the fourth edition of the A.M.A., *Guides*¹⁰ and indicated that appellant had an impairment of 10 percent to the right upper extremity and 6 percent to the body. However, in a deposition taken on January 14, 2002, he noted that his rating was changed by utilizing the fifth edition of the A.M.A., *Guides*.¹¹ He referred to the appropriate tables and charts and determined that under the fifth edition,¹² appellant had a four percent permanent impairment of the right upper extremity. The Office medical adviser referred to the A.M.A., *Guides*¹³ and determined that appellant had a one percent impairment of the right upper extremity.

Section 8123 of the Act¹⁴ provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician to resolve the conflict.¹⁵

The Board finds that a conflict was created by the opinion of Dr. Krahn, who found that appellant had a four percent permanent impairment of the right upper extremity and the Office medical adviser, who found that appellant had a one percent permanent impairment of the right upper extremity. Thus, the case must be remanded to the Office for further development. To resolve the outstanding conflict, the Office shall refer appellant, the case record and a statement of accepted facts to an appropriate specialist to obtain a detailed, well-rationalized opinion regarding the degree of permanent impairment of appellant's right upper extremity according to the appropriate edition of the A.M.A., *Guides*,¹⁶ pursuant to section 8123(a).¹⁷

⁹ In the deposition, Dr. Krahn indicated that he had rated appellant with 10 percent to the right upper extremity and 6 percent to the body.

¹⁰ *See supra* note 5.

¹¹ *See supra* note 8.

¹² *Id.*

¹³ *Id.*

¹⁴ 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

¹⁵ *Shirley L. Steib*, 46 ECAB 309, 316 (1994).

¹⁶ *Supra* note 8.

¹⁷ 20 C.F.R. § 10.321.

The September 6, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
April 17, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member