

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES F. HANCOCK, II and U.S. POSTAL SERVICE,  
POST OFFICE, Norwalk, CA

*Docket No. 03-533; Submitted on the Record;  
Issued April 17, 2003*

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DECISION and ORDER

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

The issue is whether appellant has more than a seven percent permanent impairment of the left upper extremity and more than a one percent permanent impairment of the right upper extremity, for which he received a schedule award.

On June 17, 1996 appellant, then a 46-year-old letter carrier, filed an occupational disease claim asserting that he sustained a cervical strain and left upper shoulder injury as a result of his federal employment duties. The Office of Workers' Compensation Programs accepted his claim for aggravation of cervical spine degenerative disc disease at C6-7.

On October 7, 1997 Dr. Lesley Chooi, an attending Board-certified internist, noted that appellant had reached maximum medical improvement.

On November 4, 1998 appellant filed a claim for a schedule award.

On March 30, 1999 Dr. William C. Boeck, Jr., a Board-certified orthopedic surgeon, performed a second opinion evaluation at the request of the Office. The Office provided Dr. Boeck with a statement of accepted facts, a list of questions to be addressed and copies of the relevant medical evidence of record. Dr. Boeck noted his findings on physical examination and provided range of motion measurements for appellant's right and left shoulders, elbows and wrists. He diagnosed cervical strain, chronic and preexisting cervical degenerative disc disease, which had been permanently aggravated by appellant's employment duties. Dr. Boeck opined that appellant had no significant loss of use of his left upper extremity. In supplemental reports dated May 11 and June 29, 1999, he clarified his opinion, explaining that appellant's condition was not a natural progression of his disease, but had been permanently aggravated by his employment.

On May 12, 1999 and April 4, 2000 Office medical advisers reviewed Dr. Boeck's medical reports. Applying Dr. Boeck's findings to the applicable tables of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, the Office medical

advisers were in accord that appellant had a seven percent permanent impairment of the left upper extremity, but no permanent impairment of the right upper extremity, due to his accepted cervical condition.<sup>1</sup>

On May 8, 2000 the Office issued a schedule award for a seven percent permanent impairment of the left upper extremity. By letters dated August 2 and October 30, 2000, appellant requested reconsideration of the Office's May 8, 2000 decision. In a decision dated November 2, 2000, the Office denied appellant's request for reconsideration on the grounds that appellant neither raised substantial legal questions nor included new and relevant evidence and thus, it was insufficient to warrant review of the prior decision.

On June 6, 2002 appellant filed a claim for an additional schedule award.

On July 29, 2002 Dr. Boeck again performed a second opinion evaluation at the request of the Office. The Office provided Dr. Boeck with an updated statement of accepted facts, a list of questions to be addressed and copies of the relevant medical evidence of record. Dr. Boeck recorded appellant's comments that, since his prior examination in 1999, he had developed right shoulder pain and that now he had more symptoms in his right shoulder than in his left. He noted his findings on physical examination and provided range of motion measurements for appellant's right and left shoulders, elbows and wrists, as well as grip strength and arm circumference measurements. Dr. Boeck noted that all range of motion measurements and reflex measurements were normal bilaterally and that, clinically, grip strength was equally strong in both hands. He further noted that physical examination revealed tenderness to palpation over the right shoulder, but normal intrinsic motions, no observable weakness of motion in the upper extremities and no alteration of sensation. Dr. Boeck again diagnosed cervical strain, chronic and cervical degenerative disc disease, which were causally related to appellant's employment through permanent aggravation and were not a natural consequence of the preexisting cervical degenerative disc disease. He explained that the ramifications of appellant's condition were limited motions in the cervical spine and tenderness over the right shoulder area and complaints of pain in the neck and shoulder areas. Dr. Boeck stated that appellant should not lift greater than 25 pounds due to the loss of range of motion of his neck, but reiterated that appellant had no loss of motion in his shoulders, no atrophy or deformity, no decreased strength or diminished sensation and no other specific findings.

On September 1, 2002 an Office medical adviser reviewed Dr. Boeck's July 29, 2002 evaluation. Applying Dr. Boeck's findings to the applicable tables of the fifth edition of the A.M.A., *Guides*, the Office medical adviser determined that appellant had a one percent permanent impairment of the right upper extremity due to pain, but no additional permanent impairment of the left upper extremity beyond the seven percent previously awarded.<sup>2</sup>

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<sup>1</sup> The Board notes that the Office medical advisers applied the fourth edition of the A.M.A., *Guides*, which was effective at the time of their evaluations.

<sup>2</sup> The Board notes that the Office medical adviser properly applied the fifth edition of the A.M.A., *Guides*, which became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001).

On September 9, 2002 the Office issued a schedule award for a one percent permanent impairment of the right upper extremity and further found that appellant was not entitled to any additional impairment for his left upper extremity.

The Board finds that appellant has no more than a seven percent permanent impairment of his left upper extremity, and a one percent permanent impairment of his right upper extremity, for which he received schedule awards.

Under section 8107 of the Federal Employees' Compensation Act<sup>3</sup> and section 10.404 of the implementing federal regulations,<sup>4</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*<sup>5</sup> has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>6</sup> Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards.<sup>7</sup>

Upper extremity impairments due to sensory loss resulting from peripheral nerve disorders are determined according to the grade of severity of loss and the relative maximum upper extremity impairment value of the nerve structure involved, as shown in the classification and procedure set forth in Table 16-10, page 482, "determining impairment of the upper extremity due to sensory deficits or pain resulting from peripheral nerve disorders based." The Office medical adviser identified the nerve structure involved as the C7 spinal nerve. According to Table 16-13, page 489, the maximum upper extremity impairment due to sensory deficit of the C7 spinal nerve is 5 percent. The Office medical adviser classified the degree of sensory deficit in the right upper extremity as Grade 4, "Distorted superficial tactile sensibility (diminished light touch) with or without minimal abnormal sensations or pain that is forgotten during activity." This grade corresponds to sensory deficits that are between 1 and 25 percent.

Following the procedure set forth in Table 16-10, page 482, the Office medical adviser multiplied the severity of the sensory deficits by the maximum impairment value of the nerve structure involved to obtain the upper extremity impairment for that structure. For the right upper extremity, this means multiplying appellant's 25 percent sensory deficit by the maximum impairment value of 5 percent, resulting in an impairment rating of 1 percent. As Dr. Boeck did not note any pain or loss of sensation associated with appellant's left shoulder, and specifically stated that all range of motion measurements were normal, the Office medical adviser properly

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB \_\_\_\_ (Docket No. 01-1361, issued February 4, 2002).

<sup>6</sup> See *Joseph Lawrence, Jr.*, *supra* note 5; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>7</sup> FECA Bulletin No. 01-05 (issued January 29, 2001).

concluded that appellant was not entitled to any additional schedule award for his left upper extremity.

The Board finds that the Office correctly followed standardized procedures for calculating the impairment of appellant's upper extremities due to spinal nerve involvement based on the findings of the Office second opinion physician.

The September 17, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
April 17, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member