

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKIE L. FRANKLIN and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Atlanta, GA

*Docket No. 03-1385; Submitted on the Record;
Issued August 13, 2003*

DECISION and ORDER

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

The issue is whether appellant has more than a 10 percent permanent impairment of the left upper extremity for which she received a schedule award.

On March 31, 2000 appellant, then a 36-year-old postal distribution clerk, filed a traumatic injury claim alleging that on that date she injured her left shoulder when she moved heavy boxes.

By decision dated July 5, 2001, the Office of Workers' Compensation Programs accepted appellant's claim for an aggravation of impingement syndrome of the left shoulder.

In a report dated July 12, 2001, Dr. Xavier A. Duralde, appellant's attending physician, stated that she had a 24 percent permanent impairment of the left shoulder according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) based on weakness of pinch strength and limitation in range of motion. He stated that appellant had reached maximum medical improvement.

The Office's district medical adviser noted, on March 22, 2002, that Dr. Duralde's July 12, 2001 report was insufficient to establish the extent of permanent impairment to appellant's left shoulder because he did not provide measurements to support his finding of decreased range of motion and because pinch strength measurements were not applicable to her condition.

On April 23, 2002 Dr. Joseph I. Hoffman, Jr., an orthopedic surgeon and an Office referral physician, provided a range of motion measurements for appellant's left shoulder that included 60 degrees of internal rotation, 90 degrees external rotation, 120 degrees forward flexion, 30 degrees hyperextension, 125 degrees abduction and 90 degrees adduction.

Based on Dr. Hoffman's findings, the Office's district medical adviser applied the fifth edition of the A.M.A., *Guides* to find that appellant had a 10 percent permanent impairment of

the left upper extremity for a loss of range of motion based on a 4 percent impairment for 120 degrees of flexion and a 1 percent impairment for 30 degrees of extension according to Figure 16-40 at page 476; a 3 percent impairment for 125 degrees of abduction and a 0 percent impairment for 90 degrees of abduction according to Figure 16-43 at page 477; a 2 percent impairment for 60 degrees of internal rotation and a 0 percent impairment for 90 degrees of external rotation according to Figure 16-46 at page 479. He noted that appellant had reached maximum medical improvement unless she elected to undergo further surgery.

By decision dated June 17, 2002, the Office granted appellant a schedule award for a 10 percent permanent impairment of the left upper extremity.¹

The Board finds that appellant has no more than a 10 percent permanent impairment of the left upper extremity for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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.⁴

In this case, Dr. Duralde, appellant's attending physician, opined that she had a 24 percent permanent impairment of the left shoulder based on weakness of pinch strength and limitation in range of motion. However, he did not provide measurements of appellant's range of motion and weakness of pinch strength is not an appropriate measure of shoulder impairment.⁵ Therefore, Dr. Duralde's opinion is not sufficient to establish the extent of appellant's permanent impairment of the left shoulder.

On April 23, 2002 Dr. Hoffman, an orthopedic surgeon and an Office referral physician, provided range of motion measurements for appellant's left shoulder that included 60 degrees of internal rotation, 90 degrees external rotation, 120 degrees forward flexion, 30 degrees hyperextension, 125 degrees abduction and 90 degrees adduction.

¹ The record contains additional evidence which was not before the Office at the time it issued its June 17, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422 (1997).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ A.M.A., *Guides* 508 (“[m]easurements of grip and pinch strength are used to evaluate power weaknesses relating to the structures in the hand, wrist or forearm. Manual muscle testing of major groups is used for testing strength about the elbow and shoulder.”)

The Office's district medical adviser applied the findings of Dr. Hoffman to the fifth edition of the A.M.A., *Guides* to find that appellant had a total of 10 percent permanent impairment of the left upper extremity for a loss of range of motion based on 4 percent for 120 degrees of forward flexion and 1 percent for 30 degrees of extension; 3 percent for 125 degrees of abduction and 0 percent for 90 degrees of abduction; and 2 percent for 60 degrees of internal rotation and 0 percent for 90 degrees of external rotation. There is no medical evidence of record, based on a correct application of the A.M.A., *Guides*, to establish that appellant has more than a 10 percent permanent impairment of the left upper extremity for which she received a schedule award.

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

Dated, Washington, DC
August 13, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member