

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID GABALDON and DEPARTMENT OF THE AIR FORCE,
DEFENSE LOGISTICS AGENCY, Hill Air Force Base, UT

*Docket No. 03-1723; Submitted on the Record;
Issued December 4, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 33 percent impairment of the right upper extremity for which he received schedule awards.

The Office of Workers' Compensation Programs accepted that on December 11, 1985 appellant, then a 39-year-old material sorter, sustained a right shoulder injury for which he underwent surgery on January 20, 1989, May 10, 2001 and June 25, 2002. In January 1990, the Office originally granted appellant a schedule award for a 16 percent impairment of the right upper extremity, followed by an additional schedule award for 12 percent on April 7, 1992. His subsequent claim for an additional impairment award was denied by the Office in a decision dated September 12, 1997. Following an oral hearing, by decision dated December 10, 1999, an Office hearing representative affirmed the September 12, 1997 decision. In a decision dated April 23, 2001, the Board affirmed the schedule award decisions.¹

On February 7, 2003 appellant filed a claim for an additional schedule award.² He submitted an impairment evaluation dated December 17, 2002 from Dr. Cory E. Anden, Board-certified in physical medicine and rehabilitation. Dr. Anden stated that, according to Table 16-22 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a 24 percent impairment due to right shoulder rotator cuff tear with subluxation and glenohumeral arthritis and that he had an additional 24 percent impairment based on loss of range of motion. Combining the impairment ratings resulted in a 42 percent upper extremity impairment, Dr. Anden provided a form report dated March 4, 2003, in which he noted that appellant had weakness with pain and restricted mobility, mild humeral subluxation, supraspinatus and infraspinatus muscle atrophy and atrophy and muscle defect of the proximal lateral deltoid.

¹ Docket Number 00-1557.

² Appellant retired effective October 1, 2000.

On February 26, 2003 an Office medical adviser recommended that Dr. Anden use Table 16-26, which relates upper extremity impairments to shoulder instability, in lieu of Table 16-22, which relates to subluxation of fingers. In an addendum report dated April 22, 2003, he stated that, according to Table 16-26, appellant had 12 percent upper extremity impairment due to a subluxating humeral head. Dr. Anden used the Combined Values Chart to assign a total 33 percent permanent impairment of the right upper extremity. He noted that appellant had reached maximum medical improvement on October 24, 2002. In a report dated May 18, 2003, the Office medical adviser recommended a rating of 33 percent impairment for the right upper extremity.

In a decision dated May 27, 2003, the Office granted appellant a schedule award for an additional 5 percent impairment, for a total of 33 percent permanent impairment of the right upper extremity. The award covered the period December 17, 2002 to April 5, 2003 for a total of 15.6 weeks of compensation.

The Board finds that appellant has no more than a 33 percent permanent impairment of the right upper extremity for which he had received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members 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.⁵ 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.⁶

The shoulder functional unit represents 60 percent of the upper extremity function. The shoulder has 3 functional units of motion: flexion and extension, representing 50 percent of shoulder function; abduction and adduction, representing 30 percent of shoulder function; and internal rotation and external rotation, representing 20 percent of shoulder function. The impairments are converted to upper extremity impairments by multiplying their values by 60 percent. The actual range of motion measurements are recorded and applied to the various impairment pie charts.⁷ Shoulder instability patterns are based on the parameters listed in Table 16-26 and can be classified as occult instability, instability with a subluxating humeral head, and instability with a dislocating humeral head. The shoulder representing 60 percent of the upper

³ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.304 (1999).

⁵ 5 U.S.C. § 8107(c)(19).

⁶ 20 C.F.R. § 10.404 (1999).

⁷ A.M.A., *Guides* at 474.

extremity Table 16-18, the patterns of occult 10 percent, subluxating 20 percent and dislocating 40 percent instabilities represent upper extremity impairments of 6 percent, 12 percent and 24 percent respectively. This value may be combined only with impairments due to decreased motion section 16.4. Pain and decreased muscle strength are not rated separately.⁸

In the instant case, Dr. Anden, Board-certified in physical medicine and rehabilitation, noted the following shoulder range of motion findings: forward elevation of 42 degrees, backward elevation of 10 degrees, abduction of 64 degrees, adduction of 30 degrees, internal rotation of 18 degrees, external rotation of 21 degrees and extension of 10 degrees. He advised that appellant had weakness with pain and restricted mobility, mild humeral subluxation, supraspinatus and infraspinatus muscle atrophy and atrophy and muscle defect of the proximal lateral deltoid. Dr. Anden further stated that appellant had a constant deep ache in the shoulder and upper arm, ranging from 5 to 10 on an ascending scale to a maximum of 10 that pain interfered with use. He stated that appellant's sensations were intact. Dr. Anden also rated appellant with a 12 percent impairment based on right shoulder subluxation.

In a report dated May 18, 2003, the Office medical adviser noted that, under Figure 16-40, forward elevation of 42 degrees, rated a 10 percent impairment and backward elevation of 10 degrees, rated 2 percent impairment.⁹ He noted that, under Figure 16-43, adduction of 30 degrees, rated a 1 percent impairment and abduction of 64 degrees, rated 6 percent impairment.¹⁰ Finally, the Office medical adviser noted that, under Figure 16-46, internal rotation of 18 degrees, rated a 4 percent impairment and external rotation of 21 degrees, rated 1 percent impairment,¹¹ for a total of 24 percent impairment for loss of range of shoulder motion. The Office medical adviser combined appellant's 12 percent impairment for subluxation¹² with the 24 percent impairment for loss of range of motion to find a 33 percent impairment of the right upper extremity.¹³ The A.M.A., *Guides* requires that shoulder instability impairments are to be evaluated based on Table 16-26, rather than Table 16-22. The Office medical adviser properly calculated appellant's right upper extremity impairment pursuant to the A.M.A., *Guides*. There is no medical evidence of record that establishes that appellant has more than a 33 percent permanent impairment of the right upper extremity under the protocols of the A.M.A., *Guides*. The Office properly granted appellant an additional schedule award of 5 percent, for a total 33 percent impairment of the right upper extremity.

⁸ *Id.* at 504.

⁹ *Id.* at 476.

¹⁰ *Id.* at 477.

¹¹ *Id.* at 479.

¹² *Id.* at 505, Table 16-26.

¹³ *Id.* at 604.

The decision of the Office of Workers' Compensation Programs dated May 27, 2003 is affirmed.

Dated, Washington, DC
December 4, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member