

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LAURA FRANKLIN and U.S. POSTAL SERVICE,  
POST OFFICE, Cleveland, OH

*Docket No. 03-1995; Submitted on the Record;  
Issued December 4, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant has established that she has greater than a 15 percent permanent impairment of the right upper extremity, for which she received a schedule award.

On December 2, 1996 appellant, a 44-year-old distribution clerk, filed a claim for benefits, alleging that she injured her right arm and right shoulder in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for right arm tendinitis; right shoulder impingement syndrome; and right shoulder arthroscopy and debridement on April 21, 1998.

On October 31, 2000 the Office granted appellant a schedule award for a 15 percent permanent impairment of the right upper extremity for the period from April 19, 1999 to March 11, 2000, for a total of 46.8 weeks of compensation.

On May 20, 2002 appellant filed a Form CA-7 claim for an additional schedule award based on a partial loss of use of her right upper extremity.

In an examination and impairment evaluation dated July 8, 2002, Dr. Mark S. Berkowitz, Board-certified in physical medicine and rehabilitation, found that appellant had a 10 percent permanent impairment of the right upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fifth edition. Dr. Berkowitz stated:

“Examination of the right shoulder reveals limited motion on forward elevation. Flexion is from 0 [to] 125 degrees of flexion. Abduction is from 0 [to] 120 degrees of flexion. Internal rotation is 0 [to] 50 degrees. External rotation is 0 [to] 70 degrees. Adduction is to 30 degrees and extension is to 40 degrees.”

Dr. Berkowitz concluded that 50 degrees of internal rotation translated to a 2 percent impairment rating, which equated to a 10 percent impairment of the upper extremity pursuant to

Table 16.3 of the A.M.A., *Guides*, “[c]onversion of [i]mpairment of [u]pper [e]xtremity to [i]mpairment.”

In a memorandum/impairment evaluation dated August 28, 2002, an Office medical adviser reviewed Dr. Berkowitz’s findings and conclusions and determined that appellant had an 11 percent permanent impairment for loss of use of the right upper extremity. The Office medical adviser stated that 40 degrees of extension of the right shoulder equated to a 1 percent impairment pursuant to Table 16-40 of the A.M.A., *Guides*; 125 degrees of equated to a 4 percent impairment pursuant to Table 16-40 of the A.M.A., *Guides*; 120 degrees of abduction equated to a 3 percent impairment pursuant to Table 16-43 of the A.M.A., *Guides*; 30 degrees of adduction equated to a 3 percent impairment pursuant to Table 16-43 of the A.M.A., *Guides*; 50 degrees of internal rotation equated to a 2 percent impairment pursuant to Table 16-46 of the A.M.A., *Guides*; and 70 degrees of external rotation equated to a 0 percent impairment pursuant to Table 16-46 of the A.M.A., *Guides*, for a total right upper extremity impairment of 11 percent.

By decision dated September 16, 2002, the Office denied appellant’s request for an additional schedule award.

In a letter received by the Office, on October 9, 2002 appellant requested an oral hearing, which was held on May 5, 2003.

By decision dated July 14, 2003, an Office hearing representative affirmed the September 16, 2002 Office decision.

The Board finds that appellant has no more than a 15 percent permanent impairment of his right upper extremity, for which she has received a schedule award.

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>2</sup> However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* fifth edition as the standard to be used for evaluating schedule losses.<sup>3</sup>

In this case, the Office granted appellant a schedule award for a 15 percent permanent impairment of her right upper extremity by decision dated October 31, 2000. Appellant subsequently sought an augmented schedule award for her right upper extremity based on her accepted employment conditions. She submitted the July 8, 2002 report of Dr. Berkowitz, who concluded that appellant had a 10 percent impairment of the right upper extremity. An Office medical adviser took Dr. Berkowitz’s measurements and findings pertaining to her right shoulder

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 5 U.S.C. § 8107(c)(19).

<sup>3</sup> 20 C.F.R. § 10.404.

and determined that appellant had an 11 percent permanent impairment of her right upper extremity in accordance with the applicable tables of the A.M.A., *Guides*.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 15 percent permanent impairment for loss of use of her right upper extremity, for which she has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that she has greater than the 15 percent impairment already awarded.

The decisions of the Office of Workers' Compensation Programs dated July 14, 2003 and September 16, 2002 are hereby affirmed.

Dated, Washington, DC  
December 4, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member