

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE J. ALTHOFF and DEPARTMENT OF THE NAVY,
NAVY AIR WARFARE CENTER, Point Mugu, CA

*Docket No. 02-1660; Submitted on the Record;
Issued February 13, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has greater than a 13 percent impairment of his right upper extremity for which he received a schedule award.

On August 27, 1997 appellant, then a 41-year-old firefighter, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that, while assisting in the relocation of a universal weight unit, a piece of the apparatus fell on him causing injuries to his head, neck and shoulder. The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain, right shoulder strain and right shoulder impingement.

On February 2, 2000 Dr. Craig A. Zeman, appellant's treating orthopedic surgeon, issued his report, listing his impressions as: (1) right carpal tunnel syndrome; (2) right cubital tunnel syndrome; (3) right shoulder impingement with acromioclavicular (AC) joint arthritis; and (4) left carpal tunnel syndrome. Dr. Zeman stated that appellant could be considered permanent and stationary as of January 14, 2000. He noted subjective factors of disability as occasional mild pain in his right arm and shoulder. Objective factors of disability were listed as tenderness with a positive supraspinatus isolation test in his right shoulder. Also, Dr. Zeman noted positive Tinel's and positive Phalen's in appellant's right wrist, mild tenderness in the AC joint and on his right shoulder and decreased sensation in the median nerve distribution and splits his fourth finger in sensation between the median and the radial nerve.

On March 29, 2000 the Office requested that the Office medical adviser rate appellant's permanent functional loss of use of the right upper extremity and list the date that maximum medical improvement was obtained. On April 3, 2000 the Office medical adviser reviewed

appellant's medical reports, applied the American Medical Association, *Guides to the Evaluation of Permanent* (4th ed.) hereinafter A.M.A., *Guides* record and noted:

“From review of the medical record, the following diagnoses have been established: (1) [r]ight [r]otator cuff tendinitis and impingement syndrome[;] and (2) [r]ight carpal tunnel syndrome.

“For the purposes of [a] [s]chedule [a]ward, [appellant's] residual right carpal tunnel symptoms are consistent with mild median nerve entrapment at the wrist (carpal tunnel) resulting in 10 percent impairment of the right upper extremity (Table 16/Page 57).

“[Appellant] has Grade 3 pain/decreased sensation which does interfere with function [60 percent] (Table 11/Page 48) of the axillary nerve/deltoid muscle [5] (Table 15/Page 54), resulting in 3 percent impairment for pain which interferes with function resulting from his right rotator cuff tendinitis/impingement syndrome. Although [appellant] does have electrodiagnostic evidence of right cubital tunnel syndrome, he is not having any clinical symptoms or clinical findings or examination consistent with cubital tunnel symptoms.

“Utilizing combined values for 10 percent impairment for residual right carpal tunnel symptoms and 3 percent impairment for pain which interferes with function resulting from his right rotator cuff tendinitis/impingement syndrome, this results in 13 percent impairment of his right upper extremity.

“As such, [appellant] has 13 percent impairment of his right upper extremity. The 13 percent impairment of the right upper extremity is the sole impairment resulting from the accepted work injury of August 27, 1997. The date of maximum medical improvement is February 2, 2000, when he was felt to have reached a permanent and stationary status by his treating physician, Dr. Zeman.” (Emphasis in the original.)

On June 23, 2000 the Office issued a schedule award based on a 13 percent impairment of the right upper extremity.

On June 18, 2001 appellant requested reconsideration. In support thereof, appellant submitted reports from Dr. Michael B. Huff, a Board-certified family practitioner. In his report dated November 28, 2000, Dr. Huff requested approval to send appellant to an acupuncturist for shoulder, arm and hand pain. He noted that he had been treating appellant since August 1997. In his report dated February 21, 2001, Dr. Huff indicated that appellant had a separate injury that resulted from a fall “a few months ago.” He noted that this injury led to exacerbation of his shoulder and neck pain, but that the acute injuries had largely resolved. Dr. Huff noted that he still had a problem with his neck and right shoulder stemming from the 1997 injury. He also submitted numerous California treating physician reports dated from September 8, 2000 to August 2, 2001, indicating continuing treatment by Dr. Huff. Appellant also submitted a report by Scott Vander Zee, a licensed social worker, who indicated that appellant was under his care.

By memorandum dated August 14, 2001, the Office asked the Office medical adviser to determine if appellant had greater than the 13 percent loss of use of the right upper extremity, for which he already received a schedule award. In a report dated August 20, 2001, the Office medical adviser noted:

“From review of the above medical records, there does not appear to be any significant change in [appellant’s] condition as compared to February 2, 2000, at which time he was felt to have reached a permanent and stationary status by his treating physician, Dr. Craig Zeman. The additional medical records document ongoing problems with right rotator cuff tendinitis and carpal tunnel syndrome without significant worsening. It should be noted that [appellant] does have ongoing problems with his cervical spine[;] however[,] there is no objective evidence of any cervical radiculopathy. It should be noted that although [appellant] does have residual cervical spine problems, he is not entitled to any additional schedule award or disability for pain in the cervical spine, without evidence of cervical radiculopathy. As such, I do not feel there should be any change in [his] [s]chedule [a]ward and he continues to have a 13 percent loss of use of his right upper extremity. The date of maximum medical improvements is February 2, 2000, when he was first felt to have reached a permanent and stationary status by his treating physician, Dr. Zeman.”

By decision dated September 14, 2001, the Office denied modification of its decision.

By letter dated December 2, 2001, appellant again requested reconsideration. In support thereof, appellant submitted reports by Dr. Charles J. Curatalo, a Board-certified internist, psychiatrist and neurologist, dated from September 5 to November 20, 2001. Dr. Curatalo requested various tests on appellant. On September 27, 2001 Dr. Hector Rodriguez, a Board-certified radiologist, conducted x-rays on appellant’s right shoulder and cervical spine and found mild degenerative changes right shoulder and minimal cervical spondylosis. A magnetic resonance imaging (MRI) scan of the right shoulder on October 9, 2001 was interpreted by Dr. Cynthia Withers, a radiologist, as showing moderate bony hypertrophy right AC joint which may be causing clinical signs of impingement and probable incomplete inferior surface rotator cuff tendon tear. There was no evidence of a complete rotator cuff tendon tear. In his report dated October 15, 2001, Dr. Curatalo listed his impressions as: (1) right shoulder impingement syndrome; (2) probable partial rotator cuff tear on MRI scan right shoulder, (3) long-standing posttraumatic neck pain persistent and progressive in nature; (4) history of cervical radicular type symptomatology right upper extremity with persistent numbness, tingling and weakness about the right hand; and (5) clinical evidence of significant rotator cuff weakness left upper extremity. Finally, on November 20, 2001, Dr. John W. Gainor, a Board-certified orthopedic surgeon, diagnosed contusion of the shoulder, right.

By decision dated March 11, 2002, the Office denied modification of its September 14, 2001 decision for the reason that the evidence submitted in support of the application was insufficient to warrant modification of its prior decision.

The Board finds that appellant has no more than a 13 percent impairment to his right upper extremity, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and the implementing regulation² 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.³

In the instant case, on April 3, 2002, the Office medical adviser reviewed appellant's medical record including the reports by his treating physician, Dr. Zeman, applied the A.M.A., *Guides* and determined that appellant had a 13 percent impairment of his right upper extremity. The Office medical adviser carefully listed the appropriate pages from the A.M.A., *Guides* which he utilized in drawing his conclusion. There is no medical evidence in the record which contradicts his findings. A different Office medical adviser reviewed Dr. Huff's reports and found no additional impairment. The more recent medical reports of record, including the reports by Dr. Curatalo, do not address the issue of nature and degree of impairment nor do they mention the A.M.A., *Guides*. Accordingly, the Office properly found that appellant sustained no more than a 13 percent impairment to his right upper extremity.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

The decisions of the Office of Workers' Compensation Programs dated March 11, 2002 and September 14, 2001 are hereby affirmed.

Dated, Washington, DC
February 13, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member