

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA L. HARTIN and U.S. POSTAL SERVICE,
POST OFFICE, Duncanville, TX

*Docket No. 02-2357; Submitted on the Record;
Issued February 11, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to a schedule award for more than an eight percent permanent impairment of the upper left extremity.

The Office of Workers' Compensation Programs accepted appellant's claim for left shoulder impingement and left elbow tendinitis. On August 13, 2000 appellant filed a claim for a schedule award.

In a report dated January 14, 2000, Dr. Samuel M. Bierner, a Board-certified physiatrist, found that the diagnostic tests consisting of an electromyogram, computerized axial tomography scan and arthrogram were normal. He noted that appellant underwent surgery on May 11, 1999 for impingement syndrome of the left shoulder which consisted of arthroscopic subacromial decompression and a subacromial bursectomy. On physical examination Dr. Bierner determined that appellant had grip strength of "18/16/16 kg. [kilogram] right" and "12/8/8 kg. left." He found that in testing appellant's strength there was a total "give way" of weakness and there was no true weakness detectable. Dr. Bierner found that the reflexes were 2+ in the upper extremities and 2+ in the lower extremities. He stated that appellant's vibratory sensation was diminished in the longer finger and the little finger of the left hand, and the light touch and pin prick sensations were intact in the arms and hands.

Dr. Bierner found that, regarding the range of motion of appellant's elbow, the flexion was 145 degrees, the extension was 10 degrees, the pronation was 90 degrees and the supination was 70 degrees. He found that, regarding the range of motion of appellant's shoulder, the flexion was 148 degrees, the extension was 60 degrees, the adduction was 50 degrees, the extension was 105 degrees, the internal rotation was 54 degrees and the external rotation was 87 degrees. Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994), page 17, Dr. Bierner determined that the 10 degree extension of the elbow equaled a 1 percent impairment, the 148 degree flexion of the shoulder equaled a 2 percent impairment, the 105 abduction equaled a 3 percent impairment and the 54 degree internal rotation equaled a 2 percent impairment. The other measurements equaled a zero percent

impairment. He therefore added the two, three and two percent impairments of the shoulder to obtain a seven percent impairment. Implicitly using the Combined Values Chart, page 322, he combined a seven percent and one percent impairment to obtain an eight percent impairment to appellant's left upper extremity.

In a report dated February 26, 2002, the district medical adviser reviewed Dr. Bierner's January 14, 2000 report and applied the A.M.A., *Guides* (4th ed. 1994), to determine that appellant had an eight percent permanent impairment to her upper left extremity. In determining appellant's range of shoulder motion, on pages 43-45, Figures 38, 41 and 44, he found that appellant's flexion of 148 degrees equaled a 2 percent impairment, appellant's abduction of 105 degrees equaled a 3 percent impairment and that appellant's 54 degrees of internal rotation equaled a 2 percent impairment. The district medical adviser found that appellant's extension of 60 degrees, adduction of 50 degrees and external rotation of 87 degrees equaled a 0 percent impairment. He added the two, three and two percent impairments to obtain a total of seven percent impairment due to shoulder range of motion. In determining appellant's elbow range of motion, applying Figures 32 and 35, pages 40-41, he determined that appellant's extension of 10 degrees equaled a 1 percent impairment. He found that appellant's flexion of 145 degrees, supination of 70 degrees and pronation of 90 degrees equaled 0 percent impairment. Using the Combined Values Chart, page 322, the district medical adviser determined that appellant had a total impairment to his left upper extremity of eight percent.

On April 4, 2002 the Office issued appellant a schedule award for an eight percent impairment for loss of use of the left arm.

The Board finds that appellant is not entitled to more than an eight percent permanent impairment to her left arm for which she received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulations² 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 this case, the district medical adviser erred in using the A.M.A., *Guides* (4th ed. 1994) as, commencing February 1, 2001, he was required to use the A.M.A., *Guides* (5th ed. 2001).⁴ The error is harmless, however, as the figures he used in the fourth edition to calculate the degree

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.404.

³ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁴ *See* FECA Bulletin, No. 01-05, issued January 29, 2001.

of impairment to appellant's upper extremity are the same as the figures in the fifth edition.⁵ Applying the A.M.A., *Guides* (4th ed. 1994), and the degrees of motion identified by Dr. Bierner, the district medical adviser properly determined that, pursuant to Figure 32, page 40, appellant's 10 degree extension of the elbow was 1 percent, the 154 degree flexion was 0 percent, and pursuant to Figure 35, page 41, the 70 degree supination and the 90 degree pronation were 0 percent. He also properly determined that, pursuant to Figure 38, page 43, the 148 degree flexion of the shoulder equaled a 2 percent impairment and the 60 degree extension equaled 0 percent, pursuant to Figure 41, page 44, the 105 degree adduction equaled 3 percent and the 50 degree adduction equaled 0 percent, and pursuant to Figure 44, page 45, the 54 degree internal rotation equaled 2 percent and the 87 degree external rotation equaled 0 percent. Combining the total impairment to the shoulder, two, three, and two or seven percent with the one percent total elbow impairment under the Combined Value Chart, page 322, he obtained an eight percent impairment to appellant's upper left extremity. The district medical adviser's calculation that appellant had an eight percent impairment to his upper left extremity is based on the evidence of record and is in accordance with law.

The April 4, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁶

Dated, Washington, DC
February 11, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ See A.M.A., *Guides* (5th ed. 2001), page 472, Figure 16-34, page 474, Figure 16-37, page 476, Figure 16-40, page 477, Figure 16-43, page 479 and Figure 16-46.

⁶ In his appeal to the Board, appellant indicates that he is appealing the Office's decision dated August 12, 2002. However, there is no indication in the record that there was a decision issued on that date.