

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TERRY L. HERALD and U.S. POSTAL SERVICE,  
POST OFFICE, Cincinnati, OH

*Docket No. 02-1090; Submitted on the Record;  
Issued March 4, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a nine percent impairment of his upper right extremity.

On October 23, 1999 appellant, then a 50-year-old mechanic, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that he injured his right shoulder when he fell backwards while attempting to replace a belt.

On October 27, 1999 appellant returned to work on light duty. On February 23, 2000 after a magnetic resonance imaging (MRI) was performed, Dr. Timothy E. Kremchek, a Board-certified orthopedic surgeon, diagnosed a right shoulder rotator cuff tear. The Office of Workers' Compensation Programs accepted the claim for a torn right shoulder rotator cuff.

In an October 22, 2000 report, Dr. Kremchek found appellant's date of maximum medical improvement as October 22, 2000. Dr. Kremchek measured internal rotation at 80 degrees, external rotation at 70, forward elevation was at 110, backward elevation was 45, abduction 120 and adduction was 40 degrees. He recommended a 15 percent impairment of the right upper extremity.

The Office referred Dr. Kremchek's report to an Office medical adviser who applied the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The district medical adviser calculated a nine percent permanent impairment based on Dr. Kremchek's calculations:

	Degrees	Impairment
internal rotation	80	0 percent
external rotation	70	0 percent

forward elevation	110	5 percent
backward elevation	45	1 percent
abduction	120	3 percent
adduction	40	0 percent
Total		9 percent

In a January 18, 2002 memorandum, to the file the Office explained that it accepted the district medical adviser's conclusion over Dr. Kremchek because Dr. Kremchek did not properly apply the fifth edition of the A.M.A., *Guides*.

In a March 7, 2002 decision, the Office found that appellant was entitled to a nine percent schedule award for permanent loss of use of his right arm.

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

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,<sup>2</sup> including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.<sup>3</sup>

The schedule award provisions of the Act<sup>4</sup> and its implementing regulation<sup>5</sup> 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.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

<sup>6</sup> *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

The report of Dr. Kremchek failed to provide an explanation of how his calculation of 15 percent permanent impairment was derived in accordance with the standards and protocols of the A.M.A., *Guides*.<sup>7</sup>

The district medical adviser made his determination of 9 percent impairment based on an internal rotation of 80 degrees, external 70, forward elevation 110, backward elevation 45, abduction 120 and adduction 40 in applying the fifth edition of the A.M.A., *Guides*. Applying the fifth edition of the A.M.A., *Guides* to Dr. Kremchek's findings of 70 degrees internal rotation, and 80 degrees external rotation to Table 16-44, page 479, the Board finds that appellant has 0 percent impairment. Applying Table 16-40, page 476 of the A.M.A., *Guides* to appellant's measured forward elevation (or flexion) of 110 degrees, and backward elevation (or extension) of 45 degrees yields a 5 percent impairment for loss of flexion and 1 percent for extension. Applying appellant's abduction of 120 degrees to Table 16-43, page 477, yields a 3 percent impairment while appellant's adduction measurement of 40 degrees yields a 0 percent impairment for that range of motion function. Adding five percent impairment for flexion to one percent for extension to three percent equals nine percent total impairment for loss of range of motion.

As the report of the district medical adviser is consistent with the A.M.A., *Guides* and is the only medical evidence provided in conformance with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.<sup>8</sup>

The decision by the Office of Workers' Compensation Programs dated March 7, 2002 is hereby affirmed.

Dated, Washington, DC  
March 4, 2003

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> See *James Kennedy, Jr.*, *supra* note 6 (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

<sup>8</sup> See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).