

**United States Department of Labor
Employees' Compensation Appeals Board**

RONDA POWELL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boston, MA, Employer**

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**Docket No. 03-2053
Issued: April 19, 2004**

Appearances:
Ronda Powell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 9, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award dated May 16, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue on appeal is whether appellant has more than a seven percent impairment to her right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On December 19, 1996 appellant, then a 43-year-old mail clerk/mail processor, filed an occupational disease claim alleging that, due to the extensive work she did while utilizing her right arm, she developed rotator cuff tendinitis and shoulder impingement. Appellant's claim was accepted for aggravation of right shoulder tendinitis and she was paid compensation and medical benefits.

By letter dated November 25, 2002, the Office asked appellant to make arrangements with her treating physician for a determination as to the extent of permanent partial impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Appellant submitted a December 16, 2002 report from Dr. William A. Mitchell, Jr., a Board-certified orthopedic surgeon, who indicated that appellant continued to be restricted with active use of her arm, particularly with reaching and lifting activities and chronic pain. He stated:

“Clinical exam[ination]: Shows continued manifestations of glenohumeral instability with apprehension and a modest increase in external rotation 30 degrees at 90 degrees of abduction and 20 degrees at 30 degrees of abduction. Internal rotation is symmetrical. Painful arc particularly on extremes and against resistance testing.”

On December 18, 2002 Dr. Mitchell completed a form with regard to appellant’s impairment. He noted that appellant retained internal rotation from 0 degrees to 90 degrees, external rotation from 0 degrees to 120 degrees, forward elevation from 0 degrees to 180 degrees and abduction from 0 degrees to 110 degrees. Dr. Mitchell noted that there was an additional impairment of function of the extremity due to weakness, atrophy, pain or loss of sensation estimated at 18 percent. He recommended an impairment rating of 18 percent of the right upper extremity.

On January 9, 2003 appellant filed a claim for a schedule award.

On February 3, 2003 an Office medical adviser reviewed appellant’s claim and stated:

“I used the A.M.A., *Guides to the Evaluation of Permanent Impairment*, fifth edition, to determine the percent impairment of the right upper extremity.

“Using Figure 16-40, page 476, for forward elevation (flexion) to 180 degrees, there is no impairment. Using Figure 16-43, page 477, for abduction to 110 degrees, there is 3 percent impairment of the right upper extremity. Using Figure 16-46, page 479, for internal rotation to 90 degrees, there is no impairment and for external rotation to 120 degrees, none. Therefore, there is 3 percent impairment of the right upper extremity due to abnormal shoulder motion.

“Using Table 16-15, page 492, the maximum upper extremity impairment due to shoulder pain is 5 percent. Table 16-10, Grade 2, page 482 allows 80 percent for pain that may prevent some activities. 80 percent of 5 percent results in 4 percent impairment due to pain.

“The Combined Values Chart, page 604, is used to combine 3 percent impairment due to abnormal motion with 4 percent for pain resulting in 7 percent impairment of the right upper extremity.

“The date of maximum medical improvement is September 2001 when her orthopedic surgeon reported that, in spite of conservative treatment, she was disabled from active use of her right arm at work.”

By decision dated May 16, 2003, the Office issued a schedule award for a seven percent impairment to her right upper extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Act's implementing regulation has adopted the A.M.A., *Guides*, as the appropriate standard for evaluating schedule losses.²

ANALYSIS

The Board finds that Dr. Mitchell's report does not comport with the instructions found in the A.M.A., *Guides*. Dr. Mitchell took measurements for retained internal and external rotation, forward elevation, and abduction. He then noted that an additional impairment due to impairment of the function of the extremity due to weakness, atrophy, pain or loss of sensation was estimated at 18 percent of the right upper extremity. He then determined that appellant had an impairment rating of 18 percent. However, Dr. Mitchell did not address which tables from the A.M.A., *Guides* he utilized in arriving at his conclusion. Dr. Mitchell did not mention the A.M.A., *Guides* in his rating of impairment.

The Board has reviewed the calculations of the medical adviser and finds that he properly calculated appellant's impairment of the right upper extremity pursuant to tables of the fifth edition of the A.M.A., *Guides*, to determine that appellant had a seven percent impairment of the right upper extremity. The Office medical adviser properly determined that as forward elevation was 180 degrees, there was no impairment, using Figure 16-40, page 476. He also found, by utilizing Figure 16-46, page 479, for internal rotation to 90 degrees there was no impairment and for external rotation to 120 degrees there was also no impairment. He did note that using Figure 16-43, page 477 for abduction to 110 degrees, there was a three percent impairment of the right upper extremity due to abnormal shoulder motion. He then noted that pursuant to Table 16-15, page 492, the maximum upper extremity impairment due to shoulder pain is five percent. As properly noted by the Office medical adviser, Table 16-10, Grade 2, page 482, allows 80 percent for pain that may prevent some activities. The Office medical adviser properly noted that 80 percent of five percent results in four percent impairment due to pain. Then, utilizing the combined values chart, the Office medical adviser properly combined the three percent impairment due to abnormal motion with four percent for pain and concluded that appellant had a seven percent impairment of the upper extremity.

Accordingly, the Office properly determined that appellant has a seven percent impairment of the right upper extremity. Dr. Mitchell did not utilize the A.M.A., *Guides* in

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

concluding that appellant had an 18 percent impairment of the right lower extremity. The Office medical adviser explained his opinion that appellant had a seven percent impairment of the right upper extremity pursuant to the A.M.A., *Guides*. There is no other medical evidence in the record establishing that appellant has more than a seven percent impairment of the right upper extremity. The Board will affirm the Office's schedule award.

CONCLUSION

The Board finds that appellant has no more than a seven percent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member