

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

KIM A. BRESCIANI, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Colorado Springs, CO, Employer**

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**Docket No. 03-1968
Issued: August 2, 2004**

Appearances:
Kim A. Bresciani, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On August 5, 2003 appellant filed a timely appeal from a June 4, 2003 merit decision of the Office of Workers' Compensation Programs which granted him a schedule award for the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award.

ISSUE

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

FACTUAL HISTORY

On March 31, 2000 appellant, then a 50-year-old mailhandler, filed an occupational disease claim alleging that he experienced a burning in his right shoulder "while lifting tubs of mail." Appellant indicated that he became aware of his condition and its relationship to his federal employment on March 23, 2000. The Office noted that appellant's claim was for a

traumatic injury and accepted his claim for right shoulder strain.¹ Appellant worked limited-duty employment.

Appellant underwent a subacromial decompression and debridement of a torn biceps anchor on November 14, 2001. In a medical status report dated January 31, 2002, Dr. Thomas A. Eskestrand, a Board-certified orthopedic surgeon and appellant's attending physician, found that appellant could resume work with restrictions.

On November 8, 2002 appellant filed a claim for a schedule award. In support of his claim, appellant submitted a report dated November 7, 2002 from Dr. Eskestrand, who diagnosed impingement syndrome and noted that appellant was status post a subacromial decompression and repair of the biceps anchor. He opined that appellant had reached maximum medical improvement. Dr. Eskestrand provided range of motion measurements for the right shoulder which he noted: "limited at the upper range by pain." He completed an impairment worksheet for the shoulder from the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). He found that 110 degrees of flexion constituted a 5 percent impairment, 45 degrees of extension constituted a 1 percent impairment, 30 degrees of adduction constituted a 1 percent impairment, 100 degrees of abduction constituted a 4 percent impairment, 75 degrees of internal rotation constituted a 1 percent impairment and 50 degrees of external rotation constituted a 1 percent impairment. Dr. Eskestrand added the range of motion impairments to find a total impairment of 13 percent of the right upper extremity. He further found that appellant had an additional 3 percent impairment for loss of external rotation and abduction according to Table 16-35 on page 510 of the A.M.A., *Guides*.

In an impairment rating dated November 15, 2002, Dr. Eskestrand again listed his range of motion (ROM) and impairment findings. He stated: "In addition to the loss of ROM [range of motion] [appellant] has some weakness in motor strength. By [T]able 16-35 on page 510, he has external rotation of impairment of 2 [percent] and abduction impairment weakness of 1 [percent]." He combined the 13 percent impairment due to loss of range of motion with the 3 percent impairment due to loss of strength and concluded that appellant had a 16 percent impairment of the right upper extremity or a 10 percent whole person impairment.

On May 30, 2003 an Office medical adviser reviewed Dr. Eskestrand's findings. He concurred with Dr. Eskestrand's finding that appellant had a 13 percent impairment due to loss of ROM. The Office medical adviser further found that, according to page 508 of the A.M.A., *Guides*, "strength may not be impaired in this case...."

By decision dated June 4, 2003, the Office granted appellant a schedule award for a 13 percent permanent impairment of the right upper extremity. The period of the award ran for 40.56 weeks from November 7, 2002 to August 17, 2003.

¹ The Office regulation at 20 C.F.R. § 10.5(ee) defines traumatic injury as a "condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such a condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected."

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,² and its implementing federal regulation,³ 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ The Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁵

Regarding loss of strength, the A.M.A., *Guides* states in relevant part:

“[I]mpairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.* Decreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (e.g., thumb amputation) that prevent effective application of maximal force in the region being evaluated.”⁶ (Emphasis in original.)

ANALYSIS

In a report dated November 7, 2002, Dr. Eskestrand listed range of motion findings for appellant's right shoulder and provided impairment percentages in accordance with the A.M.A., *Guides*. He found that 110 degrees of flexion constituted a 5 percent impairment,⁷ 45 degrees of extension constituted a 1 percent impairment,⁸ 30 degrees of adduction constituted a 1 percent impairment,⁹ 100 degrees of abduction constituted a 4 percent impairment,¹⁰ 75 degrees of internal rotation constituted a 1 percent impairment¹¹ and 50 degrees of external rotation

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ 20 C.F.R. § 10.404(a).

⁵ See FECA Bulletin No. 01-05, issued January 29, 2001.

⁶ A.M.A., *Guides* 508, section 16.8a; see also FECA Bulletin No. 01-05, issued January 29, 2001.

⁷ A.M.A., *Guides* 476, Figure 16-40.

⁸ *Id.*

⁹ *Id.* at 477, Figure 16-43.

¹⁰ *Id.*

¹¹ *Id.* at 479, Figure 16-46.

constituted a 1 percent impairment.¹² Dr. Eskestrand properly added the range of motion impairment to find a total impairment of 13 percent.¹³ He further found that appellant had a 2 percent impairment due to loss of strength in external rotation and a 1 percent impairment due to loss of abduction strength.¹⁴

The Office medical adviser reviewed Dr. Eskestrand's reports and concurred with his finding that appellant had a 13 percent impairment due to loss of range of motion of the right shoulder. He properly found, however, that decreased strength could not be rated according to page 508 of the A.M.A., *Guides*. As discussed above, the A.M.A., *Guides* provides: "Decreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities or absences of parts (*e.g.*, thumb amputation) that prevent effective application of maximal force in the region being evaluated."¹⁵ (Emphasis in original.) In this case, Dr. Eskestrand found that appellant had decreased motion of the right shoulder and that his movements were limited at the upper ranges by pain. It was, therefore, inappropriate for Dr. Eskestrand to utilize the values for loss of strength in evaluating appellant's permanent impairment in view of his findings that appellant had a loss of range of motion and pain. Therefore, the Office medical adviser properly calculated appellant's impairment based on decreased range of motion and found that he had a 13 percent permanent impairment of the right upper extremity. The Board has held that where the Office medical adviser provides the only evaluation that conforms with the A.M.A., *Guides*, such an evaluation constitutes the weight of the medical evidence.¹⁶ In this case, the weight of the evidence, as represented by the opinion of the Office medical adviser, establishes that appellant has no more than a 13 percent permanent impairment of the right upper extremity.

On appeal appellant notes that his physician found that he had a 16 percent permanent impairment of the right upper extremity. However, as discussed above, Dr. Eskestrand did not properly apply the A.M.A., *Guides* in determining the extent of appellant's permanent impairment. Therefore, the Board finds that the report of the Office medical adviser constitutes the weight of the medical evidence on the issue of appellant's impairment ratings.¹⁷

CONCLUSION

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

¹² *Id.*

¹³ *Id.* at 479.

¹⁴ *Id.* at 510, Table 16-35.

¹⁵ *Id.* at 508.

¹⁶ See *John L. McClenic*, 48 ECAB 552 (1997).

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 4, 2003 is affirmed.

Issued: August 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member