

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

LaRAY A. PETERSON, Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Richmond, VA, Employer**

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**Docket No. 04-1119
Issued: August 12, 2004**

Appearances:
LaRay A. Peterson, 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 March 22, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated February 26, 2004, which granted a schedule award for seven percent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision in this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he has more than a seven percent impairment of the right upper extremity for which he received a schedule award. On appeal appellant contends that he should be compensated for chronic shoulder and neck pain.

FACTUAL HISTORY

On August 21, 2001 appellant, then a 43-year-old mail processor, sustained a right shoulder injury in the performance of his federal duties¹ for which he underwent surgical repair on August 29, 2002 by Dr. William D. Brickhouse, an attending Board-certified orthopedic surgeon. Appellant received appropriate compensation and returned to modified duty on October 15, 2002.

Dr. Brickhouse continued to submit duty status reports and treatment notes which described appellant's condition. By report dated March 20, 2003, Dr. Douglas A. Wayne, Board-certified in physical medicine and rehabilitation, provided a physiatrist consultation and advised that appellant demonstrated myofascial pain in the right upper trapezius and right medial scapular muscles. In a treatment note dated April 11, 2003, Dr. Brickhouse noted appellant's history of widespread degenerative cervical disc problems.² On May 20, 2003 the physician reported that appellant's restrictions were permanent and noted the diagnosis of myofascial pain.

On August 24, 2003 appellant filed a claim for a schedule award and submitted an August 25, 2003 report in which Dr. Brickhouse advised that appellant had some weakness and 40 degrees loss of flexion and 230 degrees loss of internal rotation of the right upper extremity. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),³ he found that appellant had a total seven percent impairment.

By reports dated September 24 and October 15, 2003, an Office medical adviser reviewed the medical evidence of record and advised that further evaluation was needed. He noted that it was impossible to lose 230 degrees of internal rotation because normal internal rotation was limited to 90 degrees. On October 15, 2003 the Office asked Dr. Brickhouse to provide actual range of motion measurements for appellant's shoulder, to comport with the fifth edition of the A.M.A., *Guides*. In response, on October 28, 2003 he submitted a letter identical to his August 25, 2003 report.

On November 21, 2003 the Office referred appellant, together with a set of questions, a statement of accepted facts and the medical record, to Dr. Robert S. Adelaar, Board-certified in orthopedic surgery. In a report dated December 17, 2003, he assessed appellant's right shoulder and advised that he had reached maximum medical improvement. Passive range of motion demonstrated 120 degrees of abduction and 120 degrees of forward flexion with guarding against external rotation stressors. Lift-off test was positive with guarding against pressure and the neurological examination was intact. Dr. Adelaar concluded that appellant had a nine percent impairment of the right upper extremity based on loss of range of motion of abduction, flexion

¹ The claim was accepted for right shoulder strain. Surgery was authorized for arthroscopic subacromial decompression and rotator cuff repair.

² A June 19, 2002 magnetic resonance imaging scan of the cervical spine demonstrated multilevel central canal stenosis from C3-4 to C6-7 and borderline central canal stenosis at C7-T1.

³ A.M.A., *Guides* (fifth edition 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

and external rotation. He further opined that appellant's cervical stenosis was not employment related.

By report dated February 2, 2004, an Office medical adviser reviewed Dr. Adelaar's report. He advised that maximum medical improvement had been reached on August 29, 2003 one year after surgery and concluded that under Figure 16-40, 120 degrees of shoulder flexion equaled a 4 percent impairment⁴ and under Figure 16-43, 120 degrees of abduction equaled a 3 percent impairment⁵ for a total right upper extremity impairment at 7 percent.

In a decision dated February 26, 2004, appellant was granted a schedule award for a 7 percent impairment of the right arm for a total of 15.6 weeks of compensation, to run from August 29, 2003 to January 28, 2004.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act⁶ and section 10.404 of the implementing federal regulation,⁷ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁸ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁹ Chapter 16 provide the framework for assessing upper extremity impairments.¹⁰

ANALYSIS

The Office accepted that appellant sustained an employment-related right shoulder strain and paid a schedule award for the right upper extremity totaling seven percent. The Board agrees with this assessment, finding that the opinion of the Office medical adviser properly reviewed the December 17, 2003 report of Dr. Adelaar, who provided a second-opinion evaluation for the Office. The Office medical adviser used the range of motion measurements Dr. Adelaar provided to evaluate appellant's right upper extremity under the fifth edition of the A.M.A., *Guides*. The Office medical adviser properly found that under Figure 16-40 shoulder

⁴ *Id.* at 476.

⁵ A.M.A., *Guides*, *supra* note 3, Figure 16-43 at 477.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ A.M.A., *Guides*, *supra* note 3.

⁹ See *Joseph Lawrence, Jr.*, *supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

¹⁰ A.M.A., *Guides*, *supra* note 3 at 433-521.

flexion of 120 degrees provided a 4 percent impairment¹¹ and that under Figure 16-43 shoulder abduction of 120 provided a 3 percent impairment¹² for a total right upper extremity impairment of 7 percent.¹³ While Dr. Adelaar concluded that appellant had a nine percent impairment and stated that this was also due to loss of range of motion on external rotation, the physician provided no actual measurements for this maneuver which could be used to rate this motion and, therefore, provided no basis for an additional impairment rating for external rotation.¹⁴ Further, as noted by the Office medical adviser, Dr. Brickhouse provided inconsistent measurements for appellant's shoulder and his report does not comport with the A.M.A., *Guides*.

Regarding appellant's contention that he is entitled to an increased award because of chronic shoulder and neck pain, the Board notes that a cervical condition has not been accepted as employment-related. The Board further notes that the fifth edition of the A.M.A., *Guides* provide that "the impairment ratings in the body system organ chapters make allowance for any accompanying pain."¹⁵ While additional impairment may be granted for chronic pain, in his reports dated August 15 and October 28, 2003, Dr. Brickhouse did not assess any impairment due to pain. Similarly, Dr. Adelaar noted appellant's complaint of continued shoulder pain, but did not characterize it as being chronic and provided no impairment rating for pain.

For these reasons, the Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* to the range of motion measurements provided by Dr. Adelaar in determining that appellant has a seven percent impairment of the right upper extremity due to loss of range of motion.

CONCLUSION

The Board finds that appellant has not established that he has more than a seven percent permanent impairment of the right upper extremity.

¹¹ A.M.A., *Guides*, *supra* note 3 at 476.

¹² *Id.* at 477.

¹³ A.M.A., *Guides*, *supra* note 3 at 472.

¹⁴ External rotation is evaluated under Figure 16-46, *id.* at 479.

¹⁵ A.M.A., *Guides*, *supra* note 3, Chapter 2.5e, page 20.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 26, 2004 be affirmed.

Issued: August 12, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member