

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

FLORENCE K. THOMPSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 04-1240
Issued: August 23, 2004**

Appearances:
Florence K. Thompson, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On April 9, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated March 16, 2004. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she has greater than a two percent permanent impairment of her right upper extremity.

FACTUAL HISTORY

Appellant, a 35-year-old mail handler, filed a Form CA-2 claim for benefits based on occupational disease on November 21, 2001 alleging that she developed a right shoulder condition causally related to factors of employment. By decision dated April 8, 2002, the Office denied the claim. By letter dated April 24, 2002, appellant requested reconsideration. The Office denied the claim by nonmerit decision dated September 4, 2002. By letter dated December 17, 2002, appellant requested reconsideration. By decision dated January 13, 2003,

the Office vacated its previous denials of appellant's claim and accepted for bursitis, right shoulder.

On March 12, 2003 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right upper extremity. On January 20, 2004 the Office referred appellant and a statement of accepted facts to Dr. Steven Valentino, an osteopath, for an impairment evaluation. In a report dated June 23, 2004, Dr. Valentino stated:

“Regional examination of her shoulders revealed well healed arthroscopic portals about the right shoulder without any evidence of delayed healing or infection. Pronation and supination are recorded to 80 degrees. Right shoulder flexion is noted to 170 degrees. Extension is noted to 50 degrees. Shoulder abduction on the right is noted to 160 degrees. Adduction is to 50 degrees. External rotation is noted at 70 degrees. Internal rotation is noted at 80 degrees....”

Based on these calculations, Dr. Valentino found that appellant had a two percent permanent impairment for loss of use of the right lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fifth edition. Dr. Valentino stated:

“Consulting [the A.M.A., *Guides*], pages 472 through 479 indicate that her impairments are as follows: 170 degrees of impairment in flexion transmits to [1] percent impairment. 160 degrees of abduction transmits to [1] percent impairment. Her total impairment of the upper extremity therefore is [two] percent.... There is no evidence of diminished strength, atrophy, ankylosis or sensory changes.”

In a memorandum/impairment rating dated August 3, 2003, an Office medical adviser reviewed Dr. Valentino's findings and conclusions regarding range of motion and calculated a two percent right upper extremity impairment pursuant to the A.M.A., *Guides*. The Office medical adviser stated that 170 degrees flexion translates to a [1] percent impairment at Table 16-40, page 476 of the A.M.A., *Guides*. The Office medical adviser then noted that pursuant to Table 16-43, page 477, 160 degrees abduction translates to a 1 percent upper extremity impairment. He found that appellant reached maximum medical improvement on July 16, 2002.

On March 16, 2004 the Office granted appellant a schedule award for a 2 percent permanent impairment of the right upper extremity for the period July 16 to August 28, 2002, for a total of 6.24 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members

¹ 5 U.S.C. §§ 8101-8193; see 5 U.S.C. § 8107(c).

of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* fifth edition as the standard to be used for evaluating schedule losses.³

ANALYSIS

In this case, the Office medical adviser determined that appellant had a two percent permanent impairment of the right upper extremity by taking Dr. Valentino's findings and conclusions regarding findings and conclusions regarding reduced range of motion based on a one percent impairment of flexion and abduction, respectively, of the right upper extremity pursuant to the A.M.A., *Guides*. The Office medical adviser then combined these totals to arrive at a two percent permanent impairment of the right upper extremity.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a two percent permanent impairment of the right upper extremity, for which she has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that she has greater than the two percent permanent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has no more than a two percent permanent impairment of the right upper extremity, for which she received a schedule award.

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 23, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member