

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK W. LEONARDO and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MA

*Docket No. 03-1805; Submitted on the Record;
Issued January 15, 2004*

DECISION and ORDER

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

The issue is whether appellant has more than an 11 percent permanent impairment of the right upper extremity, for which he received a schedule award.

On October 10, 2000 appellant, a 42-year-old mail handler, injured his right shoulder when he was struck by a box of flat mail. He filed a claim for benefits on the date of injury, which the Office of Workers' Compensation Programs accepted on December 18, 2000 for right a rotator cuff strain.

On November 8, 2001 Dr. James M. Murphy, a Board-certified orthopedic surgeon, performed acromioplasty, distal clavicle resection and right shoulder bursectomy on appellant's right wrist, which was authorized by the Office.

On July 24, 2002 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right upper extremity.

Dr. Murphy referred appellant to Dr. Sikhar N. Banerjee, Board-certified in physical medicine and rehabilitation, for an examination and impairment evaluation. In a report dated September 11, 2002, Dr. Banerjee found that appellant had a 16 percent permanent impairment of the right upper extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition). Dr. Banerjee found that appellant had a 7 percent upper extremity impairment due to restriction of right shoulder movement according to Figure 16-40, page 476 of the A.M.A., *Guides*, Figure 16-43, page 477 of the A.M.A., *Guides*, and Figure 16-9 at page 451 of the A.M.A., *Guides*. He further found that appellant had an additional 10 percent impairment of the right upper extremity due to his November 2001 distal resection arthroplasty of the right clavicle pursuant to Table 16-27 at page 506 of the A.M.A., *Guides*. Dr. Banerjee stated that these findings, combined in the Combined Values Chart at page 604, amounted to a 16 percent permanent impairment of the right upper extremity.

In a memorandum/impairment evaluation dated April 7, 2003, an Office medical adviser reviewed Dr. Banerjee's findings and conclusions and determined that appellant had an 11 percent permanent impairment for loss of use of the right upper extremity. The Office medical adviser relied on Dr. Banerjee's measurements and findings on examination. He stated that, using Table 16-10 at page 476 of the A.M.A., *Guides*, the percentage of impairment for flexion up to 120 degrees is 4 percent, and for extension up to 60 degrees is 0. The Office medical adviser noted that, using Figure 16-43 of the A.M.A., *Guides*, the percentage of impairment for abduction up to 105 degrees is 4 percent. Using Figure 16-46 of the A.M.A., *Guides*, the Office medical adviser found that the percentage of impairment for internal rotation up to 90 degrees and external rotation to 80 degrees is 0. The Office medical adviser added these figures for a total of eight percent impairment.

The Office medical adviser then noted that at Table 16-15 at page 492, the maximum upper extremity impairment due to shoulder pain is five percent. Pursuant to Table 16-10, Grade 3, page 482, allows 60 percent for pain that interferes with activities. The Office medical adviser calculated that 60 percent of 5 percent amounts to a 3 percent impairment due to pain. He then stated that, using the Combined Values Chart at page 604, a combined 8 percent impairment due to abnormal motion added to 3 percent based on pain results in an 11 percent impairment of the upper extremity. The Office medical adviser, however, did not address Dr. Banerjee's calculation of an additional 10 percent right upper extremity impairment due to the distal resection arthroplasty of the right clavicle.

On June 23, 2003 the Office granted appellant a schedule award for an 11 percent permanent impairment of the right upper extremity for the period from September 12, 2002 to May 10, 2003, for a total of 34.32 weeks of compensation.

The Board finds that the case is not in posture for decision.

The schedule award provisions 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 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

In this case, the Office medical adviser determined that appellant had an 11 percent permanent impairment of his right upper extremity by taking Dr. Banerjee's measurements and findings on examination pertaining to abnormal motion in the right shoulder, from which he derived an 8 percent impairment and combining this total with a 3 percent impairment based on

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

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

pain. However, the Office medical adviser did not address the additional 10 percent impairment of the right upper extremity for the distal resection arthroplasty of the right clavicle, pursuant to Table 16-27 at page 506 of the A.M.A., *Guides*. The Board finds that this failure to consider impairment based on the right clavicle constitutes a deficiency in the development of the medical evidence. The Board will therefore set aside the Office's June 23, 2003 decision and remand the case for the Office medical adviser to consider whether appellant is entitled to any additional impairment of the right upper extremity due to his right clavicle arthroplasty, pursuant to the A.M.A., *Guides*.

The Office of Workers' Compensation Programs' decision of June 23, 2003 is therefore set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
January 15, 2004

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member