

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

ELOISE FOSTER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 04-360
Issued: May 4, 2004**

Appearances:
Eloise Foster, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 25, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' June 3, 2003 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether appellant has more than a 26 percent permanent impairment of the left upper extremity for which she received a schedule award.

FACTUAL HISTORY

On July 24, 2001 appellant, then a 59-year-old mail handler, filed a claim for an injury to her left arm and neck caused by stuffing mail sacks and moving mail containers. The Office accepted her claim for tendinitis of the left wrist, left hand tenosynovitis, left carpal tunnel syndrome with surgical release, left shoulder sprain/strain and impingement with arthroscopic debridement, synovectomy, ligament resection, subacromial decompression and distal clavicle

excision and cervical strain. Appellant subsequently filed a claim for a schedule award for permanent impairment of her left upper extremity.

In a report dated October 15, 2002, Dr. Emmett Cox, II, appellant's orthopedic surgeon, provided a history of her left carpal tunnel syndrome. He noted that appellant was experiencing an aching pain in her left wrist and hand radiating towards her forearm that he described as "frequent/slight to occasional/moderate." Dr. Cox provided findings on examination that included 75 degrees of dorsiflexion (extension) of the left wrist, 70 degrees of palmar flexion, 40 degrees of ulnar deviation, 20 degrees of radial deviation and 55 degrees of thumb abduction. He noted that the neurovascular examination was normal in the distribution of the musculocutaneous, axillary, radial, median and ulnar nerves bilaterally; Phalen's, carpal tunnel compression, Tinel's, Finkelstein and Grind tests were all negative; radial pulses were normal and two-point discrimination was five millimeters to all fingertips. Dr. Cox did not explain, with specific reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*), how he calculated appellant's left hand impairment.

In a report dated November 13, 2002, Dr. Frank B. Giacobetti, an associate of Dr. Cox and a Board-certified orthopedic surgeon, stated that appellant was experiencing slight to minimal intermittent left shoulder pain and weakness associated with overhead lifting but no sensory loss or atrophy. He provided findings on examination that included 170 degrees of abduction, 40 degrees of adduction, 60 degrees of internal rotation, 80 degrees of external rotation, 30 degrees of extension and 170 degrees of flexion. Dr. Giacobetti did not provide a rating of appellant's left shoulder impairment.

In a March 9, 2003 memorandum, Dr. Ellen Pichey, a Board-certified family practitioner specializing in occupational medicine and an Office medical consultant, stated that, based on the A.M.A., *Guides*, fifth edition, appellant had 2 percent impairment of the shoulder due to decreased internal rotation (60 degrees) according to Figure 16-46 at page 479, 16 percent impairment due to sensory deficit or pain and loss of strength according to Tables 16-10, 16-11 and 16-15 at pages 482, 484 and 492, and 10 percent impairment due to resection of the distal clavicle according to Table 16-27 at page 506. Based on the Combined Values Chart at page 604, she calculated a 26 percent total impairment of appellant's left upper extremity.

By decision dated June 3, 2003, the Office granted appellant a schedule award for a 26 percent impairment of the left upper extremity, for 81.12 weeks of compensation for the period October 15, 2002 to May 4, 2004.¹

¹ Under the Federal Employees' Compensation Act, the maximum award for impairment of an arm is 312 weeks of compensation. 5 U.S.C. § 8107(c)(2). A 26 percent impairment of the left arm equals 81.12 weeks of compensation (312 weeks multiplied by 26 percent). The Board notes that the record contains additional evidence submitted subsequent to the Office decision of June 3, 2003. However, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing regulation³ 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 to 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*⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

Before the A.M.A., *Guides* may be utilized, a description of appellant's impairment must be obtained in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁶

ANALYSIS

Dr. Cox noted that appellant was experiencing an aching pain in her left hand that he described as "frequent/slight to occasional/moderate" and weakness in her left hand. Findings on examination included 75 degrees of dorsiflexion of the left wrist, 70 degrees of palmar flexion, 40 degrees of ulnar deviation, 20 degrees of radial deviation and 55 degrees of thumb abduction. Dr. Giacobetti found that appellant was experiencing slight to minimal intermittent left shoulder pain and weakness associated with overhead lifting. Findings on examination included 170 degrees of abduction, 40 degrees of adduction, 60 degrees of internal rotation, 80 degrees of external rotation, 30 degrees of extension and 170 degrees of flexion. Neither physician explained, with reference to the A.M.A., *Guides*, appellant's percentage of impairment due to her work-related hand and shoulder conditions.

The Office medical consultant, Dr. Pichey, applied the findings of Drs. Cox and Giacobetti to the A.M.A., *Guides*. She found that appellant had 2 percent impairment of the shoulder due to decreased internal rotation (60 degrees) according to Figure 16-46 at page 479, 16 percent impairment due to loss of strength and sensory deficit or pain according to Tables 16-10, 16-11 and 16-15 at pages 482, 484 and 492 (Grade 4 classification of 25 percent⁷ from

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁵ *See supra* note 4.

⁶ *Roel Santos*, 41 ECAB 1001 (1990).

⁷ It appears that Dr. Pichey selected the Grade 4 classification, rather than Grade 3, because Grade 3 includes diminished two-point discrimination. Dr. Cox indicated in his report that appellant had two-point discrimination of five millimeters to all fingers. According to the A.M.A., *Guides*, Table 16-5 at page 447, there is no impairment for a two-point discrimination of five millimeters.

Tables 16-10 and 16-11 multiplied by the 65 percent maximum combined impairment of the median and suprascapular nerves according to Table 16-15 equals 16.25 percent),⁸ and 10 percent impairment due to resection of the distal clavicle according to Table 16-27 at page 506.⁹ However, the Board notes that appellant's 30 degrees of extension and 170 degrees of flexion of the shoulder would equal an additional 2 percent impairment according to Figure 16-40 at page 476. Dr. Pichey did not assign any impairment for decreased extension and flexion of the shoulder. Therefore, her determination of appellant's total impairment of the left upper extremity did not include all impairment documented in the medical evidence.

CONCLUSION

This case will be remanded for the Office to recalculate appellant's left upper extremity impairment. On remand, the Office should request Dr. Pichey or another appropriate medical specialist, for an evaluation of appellant's left upper extremity impairment based on correct application of the A.M.A., *Guides*.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 3, 2003 is set aside and the case is remanded for further action consistent with this decision.

Issued: May 4, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ The A.M.A., *Guides* at page 20 provides for rounding of numbers to the nearest whole number.

⁹ Dr. Pichey correctly found no impairment due to loss of range of motion of the wrist or thumb or external rotation of the shoulder based on the A.M.A., *Guides*. See A.M.A., *Guides*, Figure 16-16 at page 458 (thumb), Figures 16-28 and 16-31 at pages 467 and 469 (wrist) and Figure 16-46 at page 479 (shoulder).