

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

LOWY R. SCHULTZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Peoria, IL, Employer**

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**Docket No. 04-1110
Issued: September 8, 2004**

Appearances:

*Lowy R. Schultz, pro se
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 22, 2004 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated February 17, 2004, in which an Office hearing representative affirmed a schedule award for a 24 percent impairment to his right upper extremity. Pursuant to 5 U.S.C. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant is entitled to more than a 24 percent permanent impairment of his right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On December 20, 2002 appellant, a 52-year-old mail handler, filed an occupational disease claim alleging that his right shoulder pain was due to his federal employment. The Office accepted the claim for right shoulder rotator cuff tear and authorized right shoulder

arthroscopy with arthroscopic acromioplasty and distal clavicle excision, which occurred on February 27, 2003.

On July 23, 2003 appellant filed a schedule award claim (Form CA-7). By letter dated September 5, 2003, Dr. Richard A. Flores, a treating physician specializing in physical medicine and rehabilitation, indicated that appellant had reached maximum medical improvement on July 11, 2003. With regards to the range of motion in his right shoulder, Dr. Flores reported 135 degrees of forward flexion, 30 degrees of backward elevation, 140 degrees of abduction, 20 degrees of adduction, 30 degrees of internal rotation, 70 degrees of external rotation and 40 degrees of extension. He reported that appellant had a total impairment of the right upper extremity of 10 percent impairment or 6 percent of the whole person.

By letter dated September 23, 2003, the Office referred the record to an Office medical adviser for review and comment. In a September 29, 2003 report, the Office medical adviser found that appellant had reached maximum medical improvement on July 14, 2003 the date that he was released to work without restrictions. The Office medical adviser determined that 140 degrees of abduction constituted a 2 percent impairment,¹ 20 degrees of adduction constituted a 1 percent impairment,² 30 degrees of rotation constituted a 4 percent impairment,³ 70 degrees of external rotation constituted 0 degrees of impairment,⁴ 135 degrees of flexion constituted a 3 percent impairment⁵ and 40 degrees of external rotation constituted a 1 percent impairment,⁶ which resulted in a total impairment of 11⁷ percent for loss of range of motion. The Office medical adviser concluded that appellant had a 2 percent impairment for diminished strength in the rotator cuff musculature based upon “4+/5 strength in the distribution of the suprascapular nerve.⁸ With regard to an impairment rating for pain, the Office medical adviser concluded that appellant had a 2 percent impairment for Grade 3 pain of the suprascapular nerve⁹ and a 10 percent impairment for the distal clavicle resection.¹⁰ Using the Combined Values Chart at page 604, the Office medical adviser concluded that appellant had a total of 24 percent impairment of the right upper extremity.

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* at 477, Figure 16-43.

² *Id.*

³ *Id.* at 479, Figure 16-46.

⁴ *Id.*

⁵ *Id.* at 476, Figure 16-40.

⁶ *Id.*

⁷ It appears the Office medical adviser reached this total by using the Combined Values Chart at 604.

⁸ *Id.* at 492, Table 16-15 and 484, Table 16-11.

⁹ *Id.* at 492, Table 16-15 and 482, Table 16-10.

¹⁰ *Id.* at 506, Table 16-27.

By decision dated October 10, 2003, the Office issued a schedule award for a 24 percent permanent impairment of the right upper extremity.

By letter dated October 15, 2004, appellant requested a review of the written record. By decision dated February 17, 2004, an Office hearing representative found that appellant had no more than a 24 percent impairment to his right upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹¹ and its implementing regulation¹² 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*¹³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹⁴ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).¹⁵

ANALYSIS

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.¹⁶ However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment. Such factors were considered in this case.

In this case, appellant's physician, Dr. Flores, found that appellant continued to experience right shoulder pain and weakness of the shoulder, forward flexion to 135 degrees, abduction of 140 degrees, adduction of 20 degrees, internal rotation of 30 degrees, external rotation of 70 degrees and extension of 40 degrees. Based upon these findings, he concluded that appellant had a 10 percent impairment of the right upper extremity or a 6 percent impairment of

¹¹ 5 U.S.C. § 8107.

¹² 20 C.F.R. § 10.404.

¹³ A.M.A., *Guides* (5th ed. 2001); *Jesse Mendoza*, 54 ECAB ____ (Docket No. 03-1516, issued September 10, 2003); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

¹⁴ *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

¹⁵ FECA Bulletin No. 01-05 (issued January 29, 2001); *Rose V. Ford*, 55 ECAB ____ (Docket No. 04-15, issued April 6, 2004).

¹⁶ *David D. Cumings*, 55 ECAB ____ (Docket No. 03-1804, issued January 22, 2004).

the whole person. He did not, however, refer to the A.M.A., *Guides* when he calculated appellant's impairment.

The Office medical adviser, however, correctly applied the A.M.A., *Guides* to the findings submitted from Dr. Flores. The Office medical adviser determined that 140 degrees of abduction constituted a 2 percent impairment, 20 degrees of adduction constituted a 1 percent impairment, 30 degrees of rotation constituted a 4 percent impairment, 70 degrees of external rotation constituted 0 degrees of impairment 135 degrees of flexion constituted a 3 percent impairment and 40 degrees of external rotation constituted a 1 percent impairment, which resulted in a total impairment of 11 percent for range of motion. The Office medical adviser concluded that appellant had a 2 percent impairment based upon "4+5 strength in the distribution of the suprascapular nerve, a 2 percent impairment for Grade 3 pain of the suprascapular nerve and a 10 percent impairment for the distal clavicle resection.¹⁷ Using the Combined Values Chart at page 604, the Office medical adviser concluded that appellant had a total of 24 percent impairment of the right upper extremity. The Board finds that the Office medical adviser properly applied the tables in the A.M.A., *Guides* and his report constitutes the weight of the medical evidence. Dr. Flores concluded that appellant had a 10 percent impairment of his right upper extremity, which is lower than the impairment rating made by the Office medical adviser. Therefore, the Office finds that appellant has no more than a 24 percent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has no more than a 24 percent permanent impairment of his right upper extremity for which he received a schedule award.

¹⁷ *Id.* at 506, Table 16-27.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated February 17, 2004 is affirmed.

Issued: September 8, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member