

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

THELMA ROGERS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Providence, RI, Employer**

**Docket No. 05-465
Issued: June 3, 2005**

Appearances:
Thelma Rogers, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 20, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated October 26, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.¹

ISSUE

The issue is whether appellant has sustained more than a 12 percent permanent impairment of her right upper extremity for which she received a schedule award.

FACTUAL HISTORY

This case has previously been on appeal twice before the Board.² In an August 29, 1991 decision, the Board found the case was not in posture for decision as the evidence was

¹ The Board notes that the record also contains a July 6, 2004 overpayment decision. However, appellant did not appeal from this decision.

² 42 ECAB 866 (1991) and 46 ECAB 602 (1995).

undisputed that appellant sustained an injury at the time, place and in the manner alleged. The Board remanded the case to determine whether the April 25, 1990 employment injury resulted in any condition for which appellant would be entitled to medical benefits or any periods of disability. In the March 13, 1995 decision, the Board reversed the Office's decisions dated June 16, 1993 and December 14, 1992 and remanded the claim for payment of continuation of pay for the period May 18 to 28, 1990. The facts and the history contained in the prior appeals are incorporated by reference. The facts and the history relevant to the present issue are hereafter set forth.

On April 25, 1990 appellant, then a 53-year-old mail handler, was transferring heavy sacks of mail from a general postal mail carrier to a U-cart when she developed pain in the right shoulder. She stopped working on April 26, 1990.³ Appellant returned to full-time light-duty work on June 4, 1990.⁴ The Office accepted the claim for right shoulder strain. Appellant received appropriate compensation benefits. The Office also authorized right arthroscopic acromioplasty and repair on July 28, 1999 and physical therapy. The authorized surgery was performed on September 9, 2002 by Dr. Andre Green, a Board-certified orthopedic surgeon and treating physician. In a September 10, 2003 report, Dr. Green advised that appellant was doing better following surgery and only had occasional, slight discomfort. He also indicated that she was working. Dr. Green noted a tender right clavicle, and motion bilaterally, and abduction/external rotation (AER) 35 right, 40 left, negative impingement, 5/5 strength to manual muscle testing bilaterally. Dr. Green advised that the shoulders were stable, and neurovascular examination was intact and that appellant had reached maximum medical improvement. He advised that he had performed an evaluation to calculate an impairment rating.

On November 20, 2003 appellant requested a schedule award.

By letter dated December 10, 2003, the Office advised her to submit a report from her physician regarding an assessment of permanent impairment.

In a report dated September 10, 2003, Dr. Green advised that, regarding the right shoulder, appellant had flexion and extension of 0 degrees for 0 impairment, abduction of 20 degrees for 1 percent impairment and adduction of 0 degrees for 0 percent impairment. Regarding external rotation, he noted that appellant had 20 degrees for 1 percent impairment and internal rotation of 20 degrees for 1 percent impairment. Dr. Green opined that appellant had a total of three percent impairment of the right upper extremity due to loss of range of motion.

Dr. Green's report and the case record were referred to an Office medical adviser. In a report dated September 22, 2004, he determined that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a 12 percent impairment of the right upper extremity. The Office medical adviser noted the history of injury included

³ The record reflects that appellant had several accepted claims for compensation, including a prior work-related right shoulder condition. The record also reflects that appellant had a myocardial infarction in January 1995, which was not accepted as work related. Appellant also has several nonwork-related conditions including hypertension, coronary artery disease, arthritis and back pain.

⁴ The record also reflects that appellant was working a second job, as a senior clerk for the state of Rhode Island.

inflammation of the right rotator cuff and an episode of right subacromial bursitis in May 1990. The Office medical adviser noted that on September 9, 2002 appellant underwent right arthroscopic rotator cuff repair, right arthroscopic acromioplasty and arthroscopic debridement. He indicated that Dr. Green determined that appellant had occasional slight discomfort, was working and had reached maximum medical improvement on September 10, 2003. The Office medical adviser noted that range of motion of the right shoulder demonstrated loss of five degrees of external rotation of the right shoulder pursuant to Figure 16-46⁵ equal to no impairment of the right upper extremity. He advised that loss of internal rotation on the right compared with the left correlated with a one percent impairment of the extremity.⁶ The Office medical adviser noted that appellant had a loss of 20 degrees of abduction pursuant to Figure 16-43,⁷ which correlated to a 1 percent impairment of the right upper extremity. He explained that appellant underwent an arthroscopic acromioplasty which, pursuant to Table 16-27,⁸ indicated an isolated distal clavicle arthroplasty would entitle appellant to 10 percent impairment of the upper extremity. The Office medical adviser added the figures to determine that appellant had a 12 percent total impairment of the right upper extremity.

On October 26, 2004 the Office granted appellant a schedule award for 12 percent impairment of the right upper extremity. The award covered a period of 37.44 weeks from September 10, 2003 to May 29, 2004.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹⁰ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.¹¹ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹²

⁵ A.M.A., *Guides*, 479, Figure 16-46.

⁶ *Id.*

⁷ *Id.* at 477, Figure 16-43.

⁸ *Id.* at 506, Table 16-27.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ 5 U.S.C. § 8107.

¹¹ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹² A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

ANALYSIS

In support of her claim for a schedule award, appellant submitted a report from Dr. Green dated September 23, 2003. The Board notes that, while he determined that appellant sustained a three percent impairment of the right upper extremity, this estimate did not conform with the protocols of the A.M.A., *Guides*.

The Office medical adviser subsequently utilized the findings in Dr. Green's report and determined that appellant had a 12 percent impairment of the right upper extremity based on the A.M.A., *Guides*. The Office medical adviser noted that range of motion of the right shoulder demonstrated loss of five degrees of external rotation of the right shoulder pursuant to Figure 16-46¹³ and was equal to no impairment of the right upper extremity. However, the Board notes that appellant's physician, Dr. Green, indicated that abduction and external rotation on the right was equal to 35 degrees. The Board notes that according to Figure 16-46¹⁴ this would correlate to one percent impairment for external rotation. He also advised that loss of internal rotation on the right compared with the left correlated with a one percent impairment of the upper extremity.¹⁵ This figure was derived from Dr. Green's calculation and when the 20 degrees is subtracted from 90 degrees, this coincides with 1 percent impairment for loss of internal rotation.¹⁶ Dr. Green also noted that appellant had a loss of 20 degrees of abduction pursuant to Figure 16-43¹⁷ which is a 1 percent impairment of the right upper extremity. The Board notes that this is consistent with the A.M.A., *Guides* and when the loss of 20 degrees is subtracted from 180 degrees, this correlates to 160 degrees, which is a 1 percent impairment for abduction. In addition, the Office medical adviser explained that pursuant to Table 16-27¹⁸ an isolated distal clavicle arthroplasty, would entitle appellant to a 10 percent impairment of the upper extremity. The Office medical adviser added the figures to determine that appellant had a 12 percent total impairment of the right upper extremity. The Board notes, however, that appellant has a total loss of range of motion of 3 percent which, when combined with the 10 percent for the surgery reflects a total of 13 percent impairment to the right upper extremity.

CONCLUSION

The Board finds that the medical evidence establishes that appellant has 13 percent permanent impairment of her right arm. The Board will modify the Office's October 26, 2004 decision to reflect that she is entitled to a schedule award for a 13 percent permanent impairment of her right upper extremity.

¹³ A.M.A., *Guides*, 479, Figure 16-46.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 477, Figure 16-43.

¹⁸ *Id.* at 506, Table 16-27.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 26, 2004 is affirmed, as modified.

Issued: June 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member