

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, TEUTONIA
STATION, Milwaukee, WI, Employer**

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**Docket No. 06-1169
Issued: August 29, 2006**

Appearances:
J.B., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 17, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated June 13, 2005, granting a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant has more than a 17 percent permanent impairment of the left upper extremity causally related to her employment injury.

FACTUAL HISTORY

On August 28, 2001 appellant, then a 42-year-old clerk, filed a traumatic injury claim alleging that she injured her left shoulder on August 27, 2001 when it was struck by a heavy mail

¹ Appellant indicated in her appeal to the Board that the date of the decision she wished to have reviewed was February 2, 2006. However, there is no final Office decision of record issued subsequent to the June 13, 2005 schedule award decision.

parcel. On December 2, 2003 the Office accepted her claim for a left shoulder contusion, rotator cuff tear and traumatic arthropathy. On May 27, 2004 appellant underwent left shoulder surgery consisting of arthroscopic rotator cuff repair, subacromial decompression and distal clavicle excision. On January 18, 2005 she filed a claim for a schedule award.

In notes dated October 8, 2004, Dr. William T. Pennington, an attending Board-certified orthopedic surgeon, stated that appellant was experiencing left shoulder and arm pain, numbness and weakness. On physical examination, appellant had minimal active forward flexion. In notes dated December 27, 2004, Dr. Pennington stated that appellant was still experiencing some pain and had a 10 degree loss of range of motion in all planes. Appellant was neurovascularly intact but had some weakness with forward flexion and abduction.

In a March 7, 2005 memorandum, Dr. David H. Garelick, a Board-certified orthopedic surgeon and an Office medical adviser, found that appellant had a 17 percent impairment of the left upper extremity. This included a 10 percent impairment for her distal clavicle resection, based on Table 16-27 at page 506 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition;² 3 percent for pain, based on Table 16-15 at page 492 and Table 16-10 at page 482 (5 percent maximum impairment for the suprascapular nerve multiplied by 60 percent maximum impairment for Grade 3); a 2 percent impairment due to mild weakness in the rotator cuff musculature based on Table 16-15 at page 492 and Table 16-11 at page 484 (35 percent maximum for motor deficit of the axillary nerve multiplied by 25 percent maximum for Grade 4/5 equals 1.75 percent, rounded to 2 percent); and a 2 percent impairment for loss of range of motion (1 percent impairment each for 170 degrees of flexion and 40 degrees of extension) based on Figure 16-40 at page 476). There was no impairment for abduction of 170 degrees, adduction of 40 degrees, and 80 degrees each for internal and external rotation, based on Figures 16-43 at page 477 and Figure 16-46 at page 479, respectively.³

By decision dated June 13, 2005, the Office granted appellant a schedule award of 53.04 weeks for a 17 percent impairment of the left upper extremity⁴ for the period December 27, 2004 to January 2, 2005.⁵

² A.M.A., *Guides* (5th ed. 2001).

³ As noted, Dr. Pennington found that appellant had a 10 degree range of motion deficit in all planes.

⁴ The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by 17 percent equals 53.04 weeks of compensation.

⁵ Appellant submitted additional evidence subsequent to the Office decision of June 13, 2005. The Board's jurisdiction 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). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT

The schedule award provision of the Act⁶ and its implementing regulation⁷ sets 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*⁸ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁹

ANALYSIS

Dr. Pennington stated that appellant was experiencing left shoulder and arm pain, numbness and weakness and had a 10 degree loss of range of motion in all planes.

Dr. Garelick reviewed the medical evidence and found that appellant had a 17 percent impairment of the left upper extremity which included a 10 percent impairment for her distal clavicle resection, based on Table 16-27 at page 506 of the A.M.A., *Guides*; 3 percent for pain, based on Table 16-15 at page 492 and Table 16-10 at page 482 (5 percent maximum impairment for the suprascapular nerve multiplied by a 60 percent maximum impairment for Grade 3); a 2 percent impairment due to mild weakness in the rotator cuff musculature based on Table 16-15 at page 492 and Table 16-11 at page 484 (35 percent maximum for motor deficit of the axillary nerve multiplied by 25 percent maximum for Grade 4/5 equals 1.75 percent, rounded to 2 percent), and a 2 percent impairment for loss of range of motion (1 percent impairment each for 170 degrees of flexion and 40 degrees of extension) based on Table 16-40 at page 476.

The Board finds that Dr. Garelick properly applied the applicable sections of the A.M.A., *Guides* to the medical evidence of record in finding that appellant had a 17 percent impairment of the left upper extremity. There is no medical evidence of record establishing that appellant has more than a 17 percent permanent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant has no more than a 17 percent permanent impairment of the left upper extremity.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁹ 20 C.F.R. § 10.404.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2005 is affirmed.

Issued: August 29, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board