

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

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**LINDA BODY, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Detroit, MI, Employer**

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**Docket No. 06-221  
Issued: June 1, 2006**

*Appearances:*  
*Linda Body, 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 November 10, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 23, 2005, finding a two percent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

**ISSUE**

The issue is whether appellant met her burden of proof to establish more than a two percent impairment to the right upper extremity for which she received a schedule award.

**FACTUAL HISTORY**

On November 19, 2000 appellant, then 41-year-old distribution clerk, filed an occupational disease claim stating that factors of her federal employment caused her bilateral hand and shoulder tendinitis. She was initially aware of her condition and that her employment caused her condition on July 2, 1998. The Office accepted right shoulder tendinitis and paid appropriate benefits. The Office later expanded the claim to include right shoulder rotator cuff

tear, right medial epicondylitis and right shoulder arthroscopy with decompression including arthroscopic rotator cuff repair. Appellant returned to full duty effective December 10, 2003.

In a report dated January 7, 2004, Dr. Norman L. Pollak, a second opinion physician Board-certified in orthopedic surgery, stated that appellant had full range of motion of the right upper extremity with no limitation and released her to return to full duty.<sup>1</sup>

On March 1, 2004 Dr. Terrence R. Lock, a treating Board-certified orthopedic surgeon, stated that appellant had normal mobility and full forward elevation with no crepitus. However, he noted that she had not reached maximum medical improvement. On September 1, 2004 Dr. Lock stated that appellant had reached maximum medical improvement.

On January 5, 2005 appellant filed a claim for a schedule award. On January 10, 2005 the Office requested that Dr. Lock provide an impairment rating of the right arm using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001). In a report dated January 21, 2005, he stated that appellant had a range of motion showing 160 degrees of forward flexion and 90 degrees of rotation at 90 degrees of abduction. Dr. Lock noted a slight diminution of strength in the right shoulder while the left shoulder had a full range of motion with a slight impingement. Dr. Lock noted permanent restrictions, noting right upper extremity pain.

On June 2, 2005 the Office referred the record to an Office medical adviser to calculate the degree of impairment. On June 8, 2005 the Office medical adviser stated that Dr. Lock had not performed a complete examination and recommended that the Office request a full report, including motor and sensory findings and complete range of motion findings for each extremity or referral to an impartial medical examiner for a final report.

The Office referred appellant, a copy of the statement of accepted facts and questions, to Dr. Michael J. Geoghegan, a second opinion physician and a Board-certified orthopedic surgeon, for an impairment rating. In a report dated July 18, 2005, he stated that he could not determine any evidence of injury to her acromion as noted in the statement of accepted facts.<sup>2</sup> Dr. Geoghegan opined that the reference may have been to a rotator cuff tear. His review of the records failed to establish that a physician performed a Mumford procedure. In any event, Dr. Geoghegan noted a positive impingement sign indicating irritation of the rotator cuff in internal rotation and flexion and further noted daily pain in the right shoulder with activity and rest. Appellant could abduct to about 140 degrees which was a 2 percent impairment of the right upper extremity based on Figure 16-43 of the A.M.A., *Guides*. Dr. Geoghegan noted no elbow impairment. On September 6, 2005 the Office medical adviser reviewed Dr. Geoghegan's

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<sup>1</sup> The Office proposed termination of appellant's compensation benefits on January 30, 2004. On March 2, 2004 the Office terminated benefits. Appellant requested a review of the written record and on July 20, 2004 a hearing representative modified the Office's March 2, 2004 decision by reinstating her medical benefits for her right shoulder condition. Appellant also filed a claim for wage loss from March 11 to 15, 2005 that the Office denied on July 22, 2005. She did not appeal these matters.

<sup>2</sup> The statement of accepted facts noted that the Office expanded appellant's claim to include bilateral mesocromial fractures, right medial epicondylitis, right shoulder arthroscopy, decompression and a Mumford procedure (arthroscopic distal clavicle resection).

report, finding that 140 degrees of abduction under the A.M.A., *Guides* 447, Figure 16-43, resulted in a 2 percent impairment of the right upper extremity.

By decision dated September 23, 2005, the Office awarded appellant a two percent schedule award for impairment of the right upper extremity. She reached maximum medical improvement on January 21, 2005 and the period of award ran for 6.4 weeks, from January 21 to March 5, 2005.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> 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* (5<sup>th</sup> ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>5</sup>

### **ANALYSIS**

In a January 21, 2005 report, appellant's attending physician, Dr. Lock, examined her after the Office requested that he provide an impairment evaluation pursuant to the A.M.A., *Guides*. However, he did not provide an impairment rating pursuant to the A.M.A., *Guides*. The Office medical adviser reviewed Dr. Lock's report and concluded that the examination of appellant was incomplete. The Office medical adviser recommended that she undergo a more complete examination whereupon the Office referred appellant to Dr. Geoghegan.

In a July 18, 2005 report, Dr. Geoghegan, a Board-certified orthopedic surgeon, examined appellant and reported his findings. Appellant had 140 degrees of abduction of the right shoulder which equaled 2 percent impairment. He found no other basis to attribute any permanent impairment. On September 6, 2005 the Office medical adviser reviewed Dr. Geoghegan's July 18, 2005 report. He properly applied the appropriate figure and page of the A.M.A., *Guides*, to find that 140 degrees of abduction resulted in a 2 percent impairment of the right upper extremity.<sup>6</sup> The medical adviser did not indicate any other basis for any greater impairment under the A.M.A., *Guides*.

There is no other medical evidence of record conforming to the A.M.A., *Guides* that supports any greater impairment. The Board finds that the Office properly found that appellant

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Willie C. Howard*, 55 ECAB \_\_\_\_ (Docket No. 04-342 & 04-464, issued May 27, 2004).

<sup>6</sup> A.M.A., *Guides* 477, Figure 16-43.

has no more than two percent impairment to the right upper extremity for which she received a schedule award.

On appeal, appellant asserts that she has pain and that she is limited in performing various activities. However, none of the examining physicians provided findings sufficient for rating any impairment due to pain. Furthermore, the Board has held that factors such as limitations on daily activities do not go into the calculation of a schedule award.<sup>7</sup>

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained more than a two percent impairment to the right upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 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

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<sup>7</sup> *James A. Castagno*, 53 ECAB 782 (2002).