

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

BRUCE MORGAN, Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL AIR MARSHAL SERVICE,
Charlotte, NC, Employer**

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**Docket No. 06-22
Issued: March 6, 2006**

Appearances:
Bruce Morgan, 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 October 30, 2005 appellant filed a timely appeal from a September 9, 2005 decision of the Office of Workers' Compensation Programs, 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 schedule award case.

ISSUE

The issue is whether appellant has more than a one percent impairment of the right arm for which he received a schedule award.

FACTUAL HISTORY

On March 3, 2003 appellant, a 39-year-old civil aviation security specialist, filed a traumatic injury claim alleging that he injured his shoulder on March 1, 2001 while arresting a passenger on an aircraft. The Office accepted the claim for right shoulder contusion and it

subsequently accepted rotator cuff tear and authorized right rotator cuff repair surgery, which occurred on January 5, 2005.

On June 23, 2005 appellant filed a claim for a schedule award.

In a report dated June 20, 2005, Dr. Robert H. Bowles, a treating Board-certified orthopedic surgeon, concluded that appellant had a five percent impairment of the right upper extremity using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). In reaching this determination, he noted that appellant had some restriction on extreme abduction and external rotation and “[h]is negative lift-off sign essentially seems to have plateaued with some very mild residual restriction of external rotation and abduction.”

In a second report dated June 20, 2005, Dr. Bowles concluded that appellant had a five percent impairment using the A.M.A., *Guides* (5th ed.). He cited to pages 474 to 479. A physical examination revealed appellant “lacks only a few degrees of full active abduction and forward flexion.” Dr. Bowles reported that appellant had full internal and external rotation and “resistant stress in all planes is normal.”

In a report dated August 9, 2005, Dr. Bowles indicated that appellant reached maximum medical improvement on June 20, 2005. He noted that he had abduction of the right shoulder of 165 degrees and external rotation of 80 degrees. Dr. Bowles concluded that appellant had a 17 percent impairment of the whole person. Using the A.M.A., *Guides* (5th ed.), he found a 10 percent impairment due to loss of external rotation based upon Figure 16-46 at page 479 and an 18 percent impairment for loss of abduction which totaled a 28 percent right upper extremity impairment.

In a report dated August 23, 2005, the Office medical adviser concluded that appellant had a 0.5 percent right upper extremity impairment. He noted that Dr. Bowles did not use the A.M.A., *Guides* properly and that his calculations were based upon the fourth edition of the A.M.A., *Guides*. However, the medical adviser noted that, if appellant had loss of other range of motion areas such as internal rotation, flexion, adduction or extension, “he may have additional impairment.” The medical adviser indicated that 165 degrees of abduction equates to a 0.5 percent impairment using Figure 16-43 at page 477. Utilizing Figure 16-49 at page 479 the Office medical adviser stated that 80 degrees of external rotation resulted in a 0 percent impairment. The medical adviser determined that appellant had a 0.5 percent permanent impairment of the right upper extremity.

On September 9, 2005 the Office granted appellant a schedule award of one percent for the right arm. The award ran for 3.12 weeks for the period June 20 to July 11, 2005.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² sets forth the number of weeks of compensation payable to employees

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

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* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

ANALYSIS

The Office accepted appellant's claim for right shoulder contusion and expanded it to accept right rotator cuff tear. On appeal appellant contended that he was entitled to a greater schedule award based upon Dr. Bowles's August 9, 2005 report. However, entitlement to a schedule award must be based on medical evidence in conformance with the A.M.A., *Guides*.⁴

In this case, the Office based appellant's schedule award of one percent permanent impairment to the right arm on the August 23, 2005 report of the Office medical adviser.

Dr. Bowles found that appellant had a five percent impairment using the A.M.A., *Guides* (5th ed.) based upon appellant's reduced range of motion by "only a few degrees of full active abduction and forward flexion." In an August 9, 2005 report, Dr. Bowles indicated that appellant reached maximum medical improvement on June 20, 2005. He noted that appellant had abduction of the right shoulder of 165 degrees and external rotation of 80 degrees indicating that appellant had a 17 percent impairment of the whole person. Using the A.M.A., *Guides* (5th ed.) he determined a 10 percent impairment due to loss of external rotation based upon Figure 16-46 at page 479 and an 18 percent impairment for loss of abduction which totaled a 28 percent right upper extremity impairment. These ratings, however, are of diminished probative value because Dr. Bowles did not correctly apply the A.M.A., *Guides* in reaching his impairment rating. Schedule awards are not based on whole person impairments.⁵

The Office's procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from the attending physician is obtained.⁶ The Office medical adviser applied the fifth edition of the A.M.A., *Guides* to the physical findings of Dr. Bowles to determine that appellant was entitled to a one percent impairment of the right arm.

In an August 23, 2005 report, the Office medical adviser reviewed Dr. Bowles' August 9, 2005 report and applied the A.M.A. *Guides*. The Office medical adviser correctly noted that Dr. Bowles erred in his impairment calculations. The Office medical adviser determined that under Figure 16-43, page 477, 165 degrees of abduction equates to a 0.5 percent impairment and

³ *Willie C. Howard*, 55 ECAB ____ (Docket No. 04-342 & 04-464, issued May 27, 2004).

⁴ *See Vanessa Young*, 55 ECAB ____ (Docket No. 04-562, issued June 22, 2004).

⁵ *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

under Figure 16-46, page 479, an external rotation of 80 degrees equated to a 0 percent impairment. As the Office medical adviser's August 23, 2005 impairment rating conforms to the A.M.A., *Guides* (5th ed. 2001), his finding constitutes the weight of the medical evidence.⁷ Appellant has not submitted any probative medical evidence indicating that he has greater than one percent impairment of the right arm.

CONCLUSION

Appellant failed to establish that he was entitled to more than a one percent impairment of the right of the right arm for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 9, 2005 is affirmed.

Issued: March 6, 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

⁷ See *Bobby L. Jackson*, 40 ECAB 593 (1989).