

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

P.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Norfolk, NE, Employer**

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**Docket No. 07-1458
Issued: November 9, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated September 29 and November 30, 2006 and February 1, 2007 addressing the degree of permanent impairment of her left upper extremity entitling her to 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.

ISSUE

The issue is whether appellant has more than 12 percent impairment of her left upper extremity for which she has received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board on appeal. On February 17, 2004 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim alleging that she slipped and fell in the performance of duty injuring her left shoulder. The Office accepted her claim for left shoulder rotator cuff tear and left shoulder distal clavicle arthroscopy with mini open rotator

cuff repair on March 16, 2004. The Office granted appellant a schedule award for two percent impairment of her left upper extremity on March 28, 2005. By decision dated March 16, 2006, the Office granted her a schedule award for an additional eight percent impairment of her left upper extremity. Appellant appealed this decision to the Board. In a September 18, 2006 decision,¹ the Board found that she was entitled to the combined value of 10 percent impairment due to arthroplasty of the shoulder and 2 percent impairment due loss of range of motion including 1 percent loss of abduction and 1 percent loss of external rotation. The Board found that appellant had 11 percent impairment of her left upper extremity and affirmed the Office's June 15 and December 29, 2005 and March 16, 2006 decisions as modified. The facts and the circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

Following the Board's September 18, 2006 decision, appellant requested reconsideration on October 9, 2006. In support of her request, she submitted a "corrected copy" of a November 9, 2005 report from Dr. Kirk S. Hutton, a Board-certified orthopedic surgeon, considered by the Board. Appellant stated that the range of motion figures applied to her left upper extremity rather than her right as previously stated and that this report established 14 percent impairment of her left upper extremity. In the new version of the November 9, 2005 report, Dr. Hutton indicated that appellant had abduction of 160 degrees on the left, 30 degrees of adduction and extension of 50 degrees on the left.

By decision dated November 30, 2006, the Office reviewed the merits of appellant's claim and found that Dr. Hutton's report was not sufficient to modify the 11 percent schedule award decision, as he had not signed or endorsed the "corrected copy."

Appellant again requested reconsideration on January 2, 2007 and submitted additional documentation from Dr. Hutton. In a signed report dated December 20, 2006, Dr. Hutton stated that in the original November 8, 2005 report "'right' was dictated in three areas which were not correct." He stated that the note had been corrected to specify the impairments of the left shoulder. The Office medical adviser reviewed Dr. Hutton's reports and noted that appellant had range of motion impairment of 1 percent due to 150 degrees of abduction, 1 percent due to 30 degrees of adduction and 2 percent due to 60 degrees of external rotation. He added these figures to reach 4 percent impairment due to loss of range of motion and combined this number with 10 percent impairment due to arthroplasty to reach a total impairment rating of 12 percent.

By decision dated February 1, 2007, the Office granted appellant a schedule award for an additional one percent impairment of her left upper extremity. The Office found that appellant's total impairment for schedule award purposes was 12 percent.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ set forth the number of weeks of compensation payable to employees

¹ Docket No. 06-1367 (issued September 18, 2006).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴ Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁵

ANALYSIS

Appellant has previously received schedule awards totaling 11 percent due to undergoing an arthroplasty of the left shoulder and experiencing loss of range of motion in the left shoulder. In support of her claim, for an additional impairment of the left upper extremity, appellant submitted a corrected copy of the November 9, 2005 note from Dr. Hutton, a Board-certified orthopedic surgeon, addressing her loss of range of motion of the left upper extremity. Dr. Hutton found that appellant's left upper extremity demonstrated external rotation of 60 degrees. He also found internal rotation of 80 degrees. The A.M.A., *Guides* do not find that these measurements constitute ratable impairments.⁶ Dr. Hutton found appellant's left shoulder demonstrated abduction of 160 degrees, 1 percent impairment under the A.M.A., *Guides* and adduction of 30 degrees also 1 percent under the A.M.A., *Guides*.⁷ He found left shoulder flexion of 180 degrees and extension of 50 degrees. Neither of these range of motion figures is considered a ratable impairment under the A.M.A., *Guides*.⁸ Based on the allowable rating under the A.M.A., *Guides*, appellant has established that she has two percent impairment of the left upper extremity due to the loss of range of motion through Dr. Hutton's report. When the loss of range of motion of 2 percent is combined, as required by the A.M.A., *Guides*, with the previously awarded 10 percent impairment due to left shoulder distal clavicle arthroplasty,⁹ then an impairment of 11 percent results for schedule award purposes.¹⁰ Appellant has not submitted any medical evidence substantiating a schedule award of more than 11 percent of her left upper extremity.

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

⁶ A.M.A., *Guides* 479, Figure 16-46.

⁷ *Id.* at 477, Figure 16-43.

⁸ *Id.* at 476, Figure 16-40.

⁹ *Id.* at 506, Table 16-27.

¹⁰ *Id.* at 505, 16.7 Arthroplasty; 604, Combined Values Chart.

CONCLUSION

The Board finds that appellant has no more than 12 percent impairment of her left upper extremity for which she has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2007, November 20 and September 29, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 9, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board