

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

E.R., Appellant)
and) Docket No. 07-1637
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 16, 2007
Plainfield, IN, Employer)

)

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 May 30, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 18, 2007 awarding him a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award issue.

ISSUE

The issue is whether appellant has established that he has more than a nine percent permanent impairment of the right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On November 17, 2005 appellant, then a 46-year-old carrier, filed a traumatic injury claim alleging that he sustained a torn right shoulder rotator cuff on November 16, 2005 when he tripped and fell on a sidewalk.¹ The Office accepted the claim for a right shoulder rotator cuff

¹ The employing establishment terminated appellant's employment effective December 23, 2005.

tear and authorized right shoulder rotator cuff tendon repair, which was performed on February 2, 2006. On January 2, 2007 appellant filed a request for a schedule award.

On April 6, 2007 Dr. Dale S. Snead, a treating physician, opined that appellant reached maximum medical improvement on February 20, 2007. A physical examination revealed that range of motion for the right shoulder included 100 degrees forward elevation, 120 degrees abduction, 45 degrees external rotation “and internal rotation T11.” Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition), Dr. Snead stated:

“Using the figures of 16-40, 16-43, 16-46, and 16-35, the impairment rating is as follows; (sic) based on loss of motion of forward elevation, abduction, and internal rotation respectively, the impairment rating is 53 and 1 percent. Weakness from all resisted motions totaled elevation of 6 percent, abduction of 3 percent, totaling 12 percent due to weakness and 9 percent due to loss of range of motion.

“Using the combined chart on page 604, this total for upper extremity impairment rating would be 20 percent of the upper extremity, which translates to 12 percent of the whole person.”

The Office medical adviser reviewed Dr. Snead’s report on April 20, 2007 and concluded that appellant had nine percent right upper extremity impairment. In reaching this conclusion, the Office medical adviser found a five percent impairment for 110 degrees of flexion using Figure 16-40 at 476, a three percent impairment for 120 degrees abduction using Figure 16-43 at 477 and a one percent impairment for external rotation 45 degrees using Figure 16-46, page 479. With respect to internal rotation, the Office medical adviser stated that there was no impairment for internal rotation since Dr. Snead did not measure “it in the standard fashion (as described by the A.M.A., *Guides* page 478).”² The Office medical adviser also noted no impairment could be given for weakness. Utilizing page 508 of the A.M.A., *Guides*, the Office medical adviser explained that, “[d]ecreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts ... that prevent effective application of maximal force in the region being evaluated.” (Emphasis in the original.) He concluded that appellant had decreased motion which precluded a strength impairment rating.

On May 18, 2007 the Office granted appellant a schedule award for a nine percent impairment of the right upper extremity, 38.08 weeks³ from February 20 to September 4, 2007.

² The A.M.A., *Guides* describe the type of measurements for internal and external rotation. See A.M.A., *Guides* 478.

³ 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). The Board notes that Office made a mathematical error in its multiplication. Multiplying 312 weeks by nine percent equals 28.08 weeks of compensation not 38.08 weeks.

LEGAL PRECEDENT

The schedule award provision of the Act⁴ and its implementing regulations⁵ set 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁶

ANALYSIS

The Office issued a schedule award for a nine percent permanent impairment to the right upper extremity, based on the April 20, 2007 report from the Office medical adviser. The issue is whether appellant has established that he has more than nine percent impairment of his right upper extremity related to his accepted employment injury.

The treating physician, Dr. Snead, had reported that appellant had a 9 percent impairment for loss of range of motion and a 12 percent impairment for weakness resulting in a total 20 percent impairment of the right upper extremity or a 12 percent whole person impairment. The Board notes that a schedule award is not payable for an impairment of the whole person.⁷ Dr. Snead's impairment recommendation included 12 percent impairment based on weakness under Table 16-35 of the A.M.A., *Guides*.⁸ However, the A.M.A., *Guides* state that the use of such a method for calculating impairment is appropriate only in a rare case where the loss of strength represents an impairing factor that has not been considered adequately by other methods. This section of the A.M.A., *Guides* states that decreased strength cannot be rated in the presence of decreased motion.⁹ Dr. Snead did not explain how his inclusion of weakness in appellant's impairment rating comported with the A.M.A., *Guides* or why it would be appropriate in appellant's case.

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.¹⁰ The

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.*; see *Billy B. Scoles*, 57 ECAB ____ (Docket No. 05-1696, issued December 7, 2005).

⁷ *D.H.*, 58 ECAB ____ (Docket No.06-2160, issued February 12, 2007); *Marilyn S. Freeland*, 57 ECAB ____ (Docket No.06-563, issued June 7, 2006).

⁸ *Supra* note 6 at 510.

⁹ *Id.* at 508.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

Office medical adviser applied the fifth edition of the A.M.A., *Guides* to the physical findings of Dr. Snead to determine that appellant was entitled to a nine percent impairment of the right upper extremity.

In an April 20, 2007 report, the medical adviser reviewed the findings of the treating physician, Dr. Snead and applied the A.M.A., *Guides*. The Office medical adviser correctly noted that Dr. Snead erred in his impairment calculations by including an impairment rating for weakness because he had sustained a loss of range of motion. With respect to loss of range of motion, he properly applied the appropriate figures in the A.M.A., *Guides* for shoulder range of motion. Under Figure 16-40, 110 degrees of flexion is five percent impairment,¹¹ 120 degrees of abduction results in a three percent impairment and 45 degrees of external rotation is a one percent impairment.¹² With respect to internal rotation, the Office medical adviser noted Dr. Snead did not comply with the standards set by A.M.A., *Guides* in determining internal rotation impairment and thus no impairment rating was appropriate. The Office medical adviser pointed out that, since appellant had a decreased range of motion, an impairment rating for loss of strength was precluded. As the Office medical adviser's April 20, 2007 impairment rating conforms to the A.M.A., *Guides* (5th ed. 2001), his finding constitutes the weight of the medical evidence.¹³ Appellant has not submitted any probative medical evidence indicating that he has greater than nine percent impairment of the right upper extremity.

CONCLUSION

Appellant failed to establish that he was entitled to more than a nine percent impairment of the right upper extremity, for which he received a schedule award.

¹¹ A.M.A., *Guides* 476, Figure 16-40.

¹² *Id.* at 477, Figure 16-43 and 479, Figure 16-46.

¹³ See *Bobby L. Jackson*, 40 ECAB 593 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 18, 2007 is affirmed.

Issued: November 16, 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