

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

A.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 07-2395
Issued: April 14, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 24, 2007 appellant filed a timely appeal from an August 9, 2007 merit decision of the Office of Workers' Compensation Programs that granted her a schedule award for 22 percent permanent 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.

ISSUE

The issue is whether appellant has more than 22 percent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On February 8, 2005 appellant, then a 58-year-old mail handler, filed a claim¹ stating that while pushing a cart on October 28, 2004 she experienced a “pop” and noticed bulging in her right shoulder. In a January 4, 2005 report, Dr. David L. Gold, a Board-certified orthopedic surgeon, stated that appellant had a deformity in the right biceps region which had recently become apparent. He noted that x-rays of the right shoulder revealed a rupture of the long head of the biceps with a very small supraspinatus tear and a possible small rotator cuff tear. Appellant did not stop work. The Office accepted her claim for aggravation of the right shoulder and upper arm sprain.

In a March 22, 2006 report, Dr. Stephen N. Fisher, a Board-certified orthopedic surgeon, noted that appellant had some pain with internal rotation of the right shoulder. In an April 26, 2006 report, he noted ongoing pain in the shoulder and trapezius region. On May 5, 2006 appellant reiterated her concern about air blowing on her at work. She exhibited diffuse tenderness over the neck and bilateral shoulders. On June 6, 2006 appellant claimed a schedule award.

By decision dated August 29, 2006, the Office denied appellant a schedule award, on the basis that insufficient medical evidence was received.

In a December 20, 2006 report, Dr. Francisco Ward, a Board-certified orthopedic surgeon, noted appellant’s history of cervical and upper extremity conditions. He diagnosed myofascial pain across the neck and shoulders, deconditioning somatic dysfunction of the thoracolumbar spine, depression, cervical spondylosis without radiculopathy and synovial fullness in the metacarpophalangeal joints bilaterally. On January 3, 2007 Dr. Ward advised that appellant had reached maximum medical improvement with regard to her shoulder and upper arm strain.

In a March 7, 2007 impairment rating, Dr. Margit L. Bleecker, a Board-certified neurologist, reviewed appellant’s right upper extremity injury and her complaints of continuing pain and tenderness. Upon physical examination she found spasms and active trigger points in the upper trapezius, levator scapulae, supraspinatus and rhomboids. Dr. Bleecker also noted that appellant had pain to palpation in the shoulder girdle region. She measured appellant’s right shoulder range of motion as follows: 40 degrees of flexion, 30 degrees of extension, 50 degrees of abduction, 20 degrees of adduction, 10 degrees of internal rotation and 50 degrees of external rotation. Dr. Bleecker applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition.² Dr. Bleecker found that, under Figure 16-40 on page 476,³ 40 degrees of flexion corresponded to 10 percent impairment and 30 degrees of extension

¹ The record reflects that appellant initially filed a recurrence of disability claim, noting a 1994 original injury, stating that, while on limited duty for previous neck and back strains, she experienced a “pop” in her right shoulder. On September 23, 2005 the Office informed appellant that her condition would be adjudicated as a new claim, since she had described a new incident or exposure rather than a recurrence of disability. The claim for appellant’s 1994 injury is not before the Board on the present appeal.

² A.M.A., *Guides* (5th ed. 2001).

³ *Id.* at 476, Figure 16-40.

translated to 1 percent impairment, for a total of 11 percent impairment based on flexion and extension. She determined that, pursuant to Figure 16-43 on page 477,⁴ 50 degrees of abduction translated to six percent impairment and 20 degrees of adduction corresponded to one percent impairment, for a total of seven percent impairment based on abduction and adduction. With regard to internal and external rotation, Dr. Bleecker found that 10 degrees of internal rotation equaled five percent impairment under Figure 16-46 on page 479 of the A.M.A., *Guides*,⁵ while 50 degrees of external rotation corresponded to one percent impairment. She calculated a total of six percent impairment based on internal rotation and external rotation. Dr. Bleecker concluded that appellant had 24 percent total right upper extremity impairment loss of range of motion.

On May 27, 2007 appellant requested reconsideration of the August 29, 2006 schedule award denial.

On July 22, 2007 the Office medical adviser noted that Dr. Bleecker's range of motion measurements were consistent with the medical evidence. Accordingly, he recommended that the Office accept Dr. Bleecker's range of motion measurements. The medical adviser also concurred with her calculations of 11 percent impairment based on flexion and extension, 7 percent impairment based on abduction and adduction, and 6 percent impairment based on internal rotation and external rotation. However, he stated that Dr. Bleecker incorrectly added the impairment values when she should have applied the Combined Values Chart on page 604-05 of the A.M.A., *Guides*⁶ to calculate appellant's total right upper extremity impairment. The medical adviser explained that, pursuant to the Combined Values Chart, 11 percent impairment combined with 7 percent impairment equals 17 percent impairment, and that 17 percent impairment combined with 6 percent impairment yields a total of 22 percent impairment, not 24 percent impairment as Dr. Bleecker determined. He recommended that the Office grant appellant a schedule award for 22 percent permanent impairment of the right upper extremity.

By decision dated August 9, 2007, the Office granted appellant a schedule award for 22 percent permanent impairment of the right upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁷ and its implementing regulations⁸ 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

⁴ *Id.* at 477, Figure 16-43.

⁵ *Id.* at 479, Figure 16-46.

⁶ *Id.* at 604-05.

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404 (1999).

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.⁹

ANALYSIS

The Board finds that appellant impairment of the right arm. In a March 7, 2007 report, Dr. Bleecker applied the A.M.A., *Guides* to find that appellant had 11 percent impairment based on loss of flexion and extension, seven percent impairment based on loss of abduction and adduction and six percent impairment based on loss of internal rotation and external rotation. She added the impairment values to find that appellant had a total 24 percent impairment of the right upper extremity based on loss of shoulder range of motion.

The Office medical adviser reviewed the medical evidence and Dr. Bleecker's impairment rating and found that she had properly measured appellant's range of motion deficits based on flexion, extension, abduction, adduction, internal rotation and external rotation. He also concurred with her finding of 11 percent impairment based on flexion and extension, 7 percent impairment based on abduction and adduction and 6 percent impairment based on internal rotation and external rotation. As noted, these percentages comport with the impairment provided in appropriate figures of the A.M.A., *Guides*.¹⁰ However, the medical adviser determined that Dr. Bleecker improperly added appellant's loss of range of motion impairment to a total 24 percent impairment of the right upper extremity. He stated that she should have applied the Combined Values Chart on page 604-05 of the A.M.A., *Guides*. The medical adviser applied the Combined Values Chart and noted that 11 percent combined with 7 percent equals 17 percent impairment and 17 percent combined with 6 percent equals 22 percent impairment.

The A.M.A., *Guides* provide that to determine impairment due to abnormal shoulder motion one must add the values contributed by each shoulder motion unit (flexion and extension, abduction and adduction, internal and external rotation).¹¹ In this case, the calculation for impairment to the upper extremity due to abnormal shoulder motion equals $(10+1) + (6+1) + (5+1)$ or 24 percent impairment. The Board finds that appellant's right arm impairment is 24 percent. Dr. Bleecker properly added appellant's impairment rating values in accordance with the A.M.A., *Guides*. The Office medical adviser improperly applied the Combined Values Chart. Dr. Bleecker properly measured appellant's range of motion deficit and added the impairment values. The Board finds that Dr. Bleecker's report establishes 24 percent permanent impairment of the right arm. The Board will affirm the schedule award as modified to find 24 percent impairment.

CONCLUSION

The Board finds that appellant has 24 percent permanent impairment of the right upper extremity.

⁹ *See id.*

¹⁰ *See supra* notes 3, 4 and 5.

¹¹ A.M.A., *Guides* 474, 479.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2007 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 14, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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