

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

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E.D., Appellant)	
)	
and)	Docket No. 09-137
)	Issued: July 1, 2009
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Chicago, IL, Employer)	
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Appearances:
Appellant, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 20, 2008 appellant filed a timely appeal from a July 28, 2008 merit decision of the Office of Workers' Compensation Programs granting him 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 a two percent permanent impairment of the right upper extremity and a one percent permanent impairment of the left upper extremity for which he received a schedule award.

FACTUAL HISTORY

On March 21, 2007 appellant, then a 56-year-old transportation security screener, filed a claim alleging that he sustained an injury to his head, neck and shoulders on March 13, 2007

when a coworker dropped bins on his head. The Office accepted the claim for cervical sprain, postconcussion syndrome and blunt trauma to the head.¹

On January 30, 2008 appellant filed a claim for a schedule award. By letter dated March 17, 2008, the Office requested that he submit an impairment evaluation from his attending physician addressing the extent of any permanent impairment due to his work injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

On April 18, 2008 Dr. Mitchell L. Goldflies, a Board-certified orthopedic surgeon, noted that appellant required an impairment rating. In a report dated May 9, 2008, signed and certified by Dr. Goldflies, a physical therapist measured appellant's range of motion and strength of the upper extremities and neck. She described appellant's complaints of minimal pain in his left shoulder and arm and pain in his shoulder and neck that did not interfere with the activities of daily living but was aggravated by weather, lifting and overhead activities. The physical therapist measured range of motion for the right shoulder of 180 degrees flexion, 40 degrees extension, 90 degrees external rotation, 80 degrees internal rotation, 30 degrees adduction and 170 degrees abduction. She measured range of motion for the left shoulder of 180 degrees of flexion, 40 degrees extension, 90 degrees external rotation, 80 degrees internal rotation, 40 degrees adduction and 170 degrees abduction. The physical therapist determined that, for the right and left shoulder, 40 degrees extension constituted a one percent impairment according to Figure 16-40 on page 476 of the A.M.A., *Guides*. She further found that 30 degrees adduction on the right side constituted a one percent impairment according to Figure 16-43 on page 477 of the A.M.A., *Guides*. The physical therapist concluded that appellant had a two percent right upper extremity impairment and a one percent left upper extremity impairment, which she found constituted a three percent whole person upper extremity rating. She determined that he had no impairment for loss of grip strength or atrophy but found a one percent impairment due to dizziness pursuant to Table 13-3 on page 312 of the A.M.A., *Guides*. The physical therapist additionally opined that appellant had a seven percent impairment for loss of range of motion of the cervical spine.

On June 30, 2008 an Office medical adviser reviewed the evidence of record and applied the A.M.A., *Guides* to the findings of the physical therapist. For the right side, he found that 40 degrees extension yielded a one percent impairment² and that 30 degrees adduction yielded a one percent impairment.³ The Office medical adviser further determined that 180 degrees flexion, 170 degrees abduction, 90 degrees external rotation and 80 degrees internal rotation yielded no impairment.⁴ For the right side, he found that 40 degrees extension constituted a 1 percent impairment,⁵ and that 180 degrees flexion, 40 degrees adduction, 170 degrees abduction, 90

¹ A computerized tomography (CT) scan of the brain and cervical spine, obtained on April 3, 2007, revealed a normal brain and degenerative changes in the cervical spine.

² A.M.A., *Guides* 476, Figure 16-40.

³ *Id.* at 477, Figure 16-43.

⁴ *Id.* at 476, 477, 479, Figures 16-43, 16-40, 16-46.

⁵ *Id.* at 476, Figure 16-46.

degrees external rotation and 80 degrees internal rotation yielded no impairment.⁶ The Office medical adviser added the impairment determinations and concluded that appellant had a two percent permanent impairment of the right upper extremity and a one percent permanent impairment of the left upper extremity. He noted that the Federal Employees' Compensation Act⁷ did not provide for an impairment due to loss of motion of the cervical spine. The Office medical adviser opined that appellant reached maximum medical improvement on May 9, 2008.

By decision dated July 28, 2008, the Office granted appellant a schedule award for a two percent permanent impairment of the right upper extremity and a one percent permanent impairment of the left upper extremity. The period of the award ran for 9.36 weeks from May 9 to July 13, 2008.

LEGAL PRECEDENT

The schedule award provision of the Act,⁸ and its implementing federal regulations,⁹ 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.¹⁰ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.¹¹

ANALYSIS

The Office accepted that appellant sustained cervical sprain, postconcussion syndrome and blunt trauma to the head due to a March 13, 2007 work injury. On January 30, 2008 appellant filed a claim for a schedule award. He submitted a May 9, 2008 physical therapist's report, certified by his attending physician Dr. Goldflies. The physical therapist found that range of motion of the right shoulder revealed 30 degrees of adduction for a one percent impairment and 40 degrees extension for a two percent impairment.¹² The remaining measurements of 180 degrees flexion, 90 degrees external rotation, 80 degrees internal rotation and 170 degrees abduction yielded no impairment.¹³ The physical therapist further measured 40 degrees

⁶ *Id.* at 476, 477, 479, Figures 16-43, 16-40, 16-46.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Id.* at § 8107.

⁹ 20 C.F.R. § 10.404.

¹⁰ *Id.* at § 10.404(a).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

¹² A.M.A., *Guides* 476, 477, Figures 16-40, 16-43.

¹³ *Id.* at 476, 477, 479, Figures 16-40, 16-43, 16-46.

extension of the left shoulder for a one percent impairment.¹⁴ The remaining left shoulder measurements of 180 degrees flexion, 90 degrees external rotation, 80 degrees internal rotation, 40 degrees adduction and 170 degrees abduction yielded no impairment.¹⁵ The physical therapist added the impairments due to loss of range of motion and found a 2 percent right upper extremity impairment and a 1 percent left upper extremity impairment. She concluded that appellant had a 3 percent whole person impairment rating. The Act, however, does not provide for impairment of the whole person.¹⁶ The physical therapist further found a 7 percent impairment of the cervical spine due to decreased range of motion. As the Act specifically excludes the back as an organ, the back does not come under the provisions for payment of a schedule award.¹⁷ The physical therapist additionally found an impairment due to dizziness according to Table 13-3 on page 312 of the A.M.A., *Guides*, relevant to impairments of the central and peripheral nervous system. The brain and central nervous system, however, are not included in the list of scheduled members under the Act and regulations.¹⁸ Therefore, appellant cannot be compensated for dizziness under the schedule award provision of the Act.¹⁹

The Office medical adviser reviewed the physical therapist's findings and concurred with her determination that appellant had a two percent permanent impairment of the right upper extremity and a one percent permanent impairment of the left upper extremity. There is no evidence of record showing that he is entitled to a greater award.

CONCLUSION

The Board finds that appellant has no more than a two percent permanent impairment of the right upper extremity and a one percent permanent impairment of the left upper extremity.

¹⁴ *Id.* at 476, Figures 16-40.

¹⁵ *Id.* at 476, 477, 479, Figures 16-40, 16-43, 16-46.

¹⁶ See 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a); see also *Tommy R. Martin*, 56 ECAB 273 (2005) (whole man impairment ratings are not provided for under the Act as section 8107 provides a compensation schedule in terms of specific members of the body).

¹⁷ 5 U.S.C. § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹⁸ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a).

¹⁹ See *Brent A. Barnes*, 56 ECAB 336 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 28, 2008 is affirmed.

Issued: July 1, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board