

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

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**J.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Philadelphia, PA, Employer**

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**Docket No. 10-642  
Issued: November 1, 2010**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 19, 2010 appellant filed a timely appeal of an October 16, 2009 schedule award decision of the Office of Workers' Compensation Programs. 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 four percent permanent impairment of the left upper extremity for which he received a schedule award.

**FACTUAL HISTORY**

On October 1, 2005 appellant, then a 45-year-old clerk, filed a traumatic injury claim alleging that on September 30, 2005 he injured his left shoulder while throwing parcels in the performance of duty. He did not stop work. The Office accepted appellant's claim for left shoulder tear of the superior labrum with both anterior and posterior extension.

Initial reports from Dr. Cynthia Harrell, specializing in occupational medicine, diagnosed left shoulder and upper arm strain. She continued submitting reports through September 14,

2007 noting left shoulder impingement. In a November 9, 2005 magnetic resonance imaging (MRI) scan report of the left shoulder, Dr. Brian Polesuk, a Board-certified diagnostic radiologist, found a tear of the superior labrum with both anterior and posterior extension. He also found tendinitis versus partial tear of the supraspinatus tendon and no full thickness rotator cuff tendon tear. Reports dated between January 5, 2006 and August 3, 2007 from Dr. John Edwards, an osteopath and physiatrist, noted appellant's complaint of left shoulder pain and diagnosed left shoulder impingement syndrome. The record also contains reports dated between January 3 and March 8, 2006 from Dr. Donald Leatherwood, II, a Board-certified orthopedic surgeon. On March 8, 2006 Dr. Leatherwood indicated that appellant did not require orthopedic surgery and could perform his normal activities without further treatment. He advised that appellant follow up as needed.

On November 25, 2008 appellant filed a schedule award claim. In support of his claim, he submitted a July 24, 2008 report from Dr. David Weiss, an osteopath specializing in family medicine, who summarized the history of injury and noted appellant's complaint of left shoulder pain and weakness as well as difficulty performing daily activities. Upon examination, he found left shoulder posterior cuff tenderness and no tenderness over the acromioclavicular joint, anterior cuff or long head of the biceps. Regarding left shoulder range of motion, Dr. Weiss found forward elevation of 160/180 degrees, abduction of 110/180 degrees, cross-over adduction of 65/75 degrees, external rotation of 90/90 degrees and internal rotation of 80/90 degrees. He also found that the posterior reach was to the sacrum and that circumduction produced audible click in the acromioclavicular joint area. Dr. Weiss indicated that drop test produced slight rotator cuff lag. He diagnosed status post glenoid tear of the left shoulder and post-traumatic acromioclavicular arthropathy with left shoulder impingement. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*,<sup>1</sup> Dr. Weiss determined one percent impairment for left shoulder flexion deficit, citing Figure 16-40 on page 476. He also determined three percent impairment for abduction deficit, citing Figure 16.43 on page 477, and three percent pain-related impairment, citing Figure 18-1 on page 574 of the A.M.A., *Guides*. Dr. Weiss determined a total of seven percent left upper extremity impairment. He noted that appellant reached maximum medical improvement on July 24, 2008.

In a January 31, 2009 report, an Office medical adviser reviewed Dr. Weiss' report and opined that appellant did not qualify for three percent pain-related impairment as none of the designated categories of pain-related impairment applied to appellant, citing sections 18.3a and 18.3b on pages 570 and 571 of the A.M.A., *Guides* respectively.<sup>2</sup> He accepted Dr. Weiss' range of motion findings and determined one percent impairment for 160 degrees of flexion, three percent impairment for 110 degrees of abduction, zero percent impairment for 65 degrees of adduction rounded to 60 degrees, zero percent impairment for 90 degrees of external rotation and zero percent impairment for 80 degrees of internal rotation, citing Figures 16-40, 16-43 and 16-46 on pages 476, 477 and 479 respectively of the A.M.A., *Guides*. The medical adviser

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<sup>1</sup> 5<sup>th</sup> ed. 2001.

<sup>2</sup> The categories are: (1) when there is excess pain in the context of verifiable medical conditions that cause pain, (2) when there are well-established pain syndromes without significant, identifiable organ dysfunction to explain the pain, and (3) where there are other associated pain syndromes. A.M.A., *Guides* 570-71.

determined that appellant had four percent total left upper extremity impairment. He also indicated that appellant reached maximum medical improvement on July 24, 2008.

In a March 2, 2009 decision, the Office issued appellant a schedule award for four percent permanent partial impairment of the left upper extremity. It paid him compensation for 12.48 weeks from July 24 to October 19, 2008.

On March 6, 2009 appellant, through his representative, requested an oral hearing which was held on July 28, 2009. He submitted a July 27, 2009 *QuickDASH* questionnaire form from Dr. Weiss indicating that appellant had 36 percent disability symptoms score based on appellant's ability to perform various tasks.<sup>3</sup>

In an October 16, 2009 decision, an Office hearing representative affirmed the March 2, 2009 decision finding that the Office medical adviser properly applied the A.M.A., *Guides* to determine appellant's percentage of impairment.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulations 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a left shoulder tear of the superior labrum with both anterior and posterior extension. Appellant submitted a report from Dr. Weiss with respect to the degree of impairment to the left upper extremity. In his July 24, 2008 report, Dr. Weiss provided the values for appellant's range of motion and the corresponding calculations. His findings included 160 degrees of flexion for one percent impairment and 110 degrees of abduction for three percent impairment, citing Figures 16-40 and 16-43 on pages 476 and 477 respectively of the A.M.A., *Guides*. Dr. Weiss also assigned three percent for pain-related impairment, citing Figure 18-1 on page 574 of the A.M.A., *Guides*. He determined that appellant had seven percent left arm impairment. However, the A.M.A., *Guides* caution that

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<sup>3</sup> The *QuickDASH* questionnaire was attached to another version of Dr. Weiss' July 24, 2008 report. This later version of the report referenced the *QuickDASH* Disability Index but otherwise had the same impairment findings totaling seven percent impairment under the fifth edition of the A.M.A., *Guides*. Dr. Weiss did not address how, if at all, the *QuickDASH* questionnaire factored into his impairment rating.

<sup>4</sup> 5 U.S.C. §§ 8101-8193. See 5 U.S.C. § 8107.

<sup>5</sup> See 20 C.F.R. § 10.404; *R.D.*, 59 ECAB 127 (2007).

examiners should not use Chapter 18 to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters. The A.M.A., *Guides* explain that the impairment ratings in the body organ system chapters make allowance for expected accompanying pain.<sup>6</sup> Dr. Weiss broadly opined that appellant had left shoulder pain and weakness and assigned an additional three percent impairment for pain. He did not explain how he determined that appellant's pain exceeded that which was already accounted for in the range of motion impairment determinations. This is important in view of the cautionary language in the A.M.A., *Guides* regarding the rating of pain under Chapter 18. Although Dr. Weiss correctly calculated that appellant's range of motion impairment totaled four percent, his improper assignment of three percent pain-related impairment caused an incorrect calculation of appellant's overall left upper extremity impairment.

After receiving Dr. Weiss' report, the Office properly referred the matter to its Office medical adviser.<sup>7</sup> The Office medical adviser reviewed the medical evidence of record and properly evaluated appellant's left shoulder impairment. He applied his findings, derived from Dr. Weiss' range of motion findings, to the A.M.A., *Guides* and determined one percent impairment for 160 degrees of flexion, three percent impairment for 110 degrees of abduction, zero percent impairment for 65 degrees of adduction rounded to 60 degrees, zero percent impairment for 90 degrees of external rotation and zero percent impairment for 80 degrees of internal rotation, citing Figures 16-40, 16-43 and 16-46 on pages 476, 477 and 479 respectively of the A.M.A., *Guides*. The medical adviser indicated, as noted, that Dr. Weiss improperly assigned an additional three percent pain-related impairment and explained that sections 18.3a and 18.3b on pages 570 and 571 of the A.M.A., *Guides* supported that appellant did not qualify for any of the designated categories of pain-related impairment. Accordingly, he explained why his calculation differed from that of Dr. Weiss and determined appellant's left shoulder impairment by applying the Combined Values Chart on page 604 of the A.M.A., *Guides* to one percent flexion impairment and three percent abduction impairment to derive a total of four percent left shoulder impairment.

Subsequent to the Office medical adviser's report, Dr. Weiss provided another version of his report that included a July 27, 2009 *QuickDASH* questionnaire noting a 36 percent disability symptoms score. This later version of the July 24, 2008 report otherwise contained the same impairment rating under the fifth edition of the A.M.A., *Guides* as contained in the earlier

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<sup>6</sup> *B.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-1457, issued February 2, 2009); *see C.J.*, 60 ECAB \_\_\_\_ (Docket No. 08-2429, issued August 3, 2009) (the impairment ratings in the body organ system chapters of the A.M.A., *Guides* make allowance for any accompanying pain).

<sup>7</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *L.H.*, 58 ECAB 561 (2007) (the Act's procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*).

version of the report. However, Dr. Weiss did not explain how the *QuickDASH* questionnaire supported or related his impairment rating under the fifth edition of the A.M.A., *Guides*.<sup>8</sup>

The Board finds that the Office medical adviser properly determined appellant's left arm impairment under the A.M.A., *Guides*. There is no other medical evidence, consistent with the A.M.A., *Guides*, showing that appellant has greater than four percent impairment of the left shoulder.

On appeal, appellant asserts that the medical evidence establishes seven percent left upper extremity impairment in accordance with the A.M.A., *Guides* as Dr. Weiss' report confirmed that appellant complained of pain with activities of daily living. However, the Board has held that factors such as employability or limitations on daily activities have no bearing on the calculation of impairment.<sup>9</sup> Appellant also asserts that the Office should have found that a conflict in medical opinion existed between Dr. Weiss and the Office medical adviser as the former determined four percent impairment and the latter found seven percent. However, the Office medical adviser was permitted to review Dr. Weiss' report to verify correct application of the A.M.A., *Guides* and confirm the percentage of impairment.<sup>10</sup> As noted, Dr. Weiss' determination of pain-related impairment was unsupported by his findings. Moreover, the medical adviser provided a rationalized opinion for the percentage of impairment that he specified.<sup>11</sup>

### **CONCLUSION**

The Board finds that appellant does not have more than four percent permanent impairment of the left upper extremity for which he received a schedule award.

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<sup>8</sup> An opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's impairment. *Carl J. Cleary*, 57 ECAB 563, 568 n.14 (2006).

<sup>9</sup> *See J.H.*, 60 ECAB \_\_\_ (Docket No. 08-2432, issued June 15, 2009).

<sup>10</sup> *See I.H.*, 60 ECAB \_\_\_ (Docket No. 08-1352, issued December 24, 2008).

<sup>11</sup> *See supra* note 4 (Office procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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