

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

F.R., Appellant)	
)	
and)	Docket No. 10-701
)	Issued: November 12, 2010
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer)	
)	

Appearances:
Jeffrey P. Zeelander, 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 11, 2010 appellant filed a timely appeal from the January 4, 2010 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 an eight percent permanent impairment of his right arm for which he received a schedule award.

FACTUAL HISTORY

The Office accepted that on February 6, 2004 appellant sustained sprains of his neck, right shoulder and right upper arm and disorder of the bursae and tendons of his right shoulder due to throwing parcels into containers at work. On September 9, 2004 appellant underwent surgical repair for right rotator cuff and labral tears. The surgery was authorized by the Office. Appellant stopped work from September 9 to 23, 2004 and then returned to limited-duty work on a full-time basis.

In an October 20, 2009 report, Dr. Nicholas Diamond, an attending osteopath, provided a discussion of appellant's factual and medical history. He indicated that examination of appellant's cervical spine revealed right sternocleidomastoid tenderness and paravertebral muscle spasm and tenderness over the posterior midline, but noted that there was no facet joint tenderness or foraminal compression. Examination of the right shoulder revealed no acromioclavicular or anterior cuff tenderness, but there was some posterior cuff and rhomboid tenderness. Dr. Diamond stated that range of motion testing revealed flexion of 170/180 degrees, abduction of 160/180 degrees, adduction of 65/75 degrees, external rotation of 90/90 degrees and internal rotation of 70/90 degrees. There is pain with forward elevation, abduction and internal rotation.¹

Dr. Diamond found that appellant reached maximum medical improvement on October 20, 2009, the date of examination, and indicated that the February 6, 2004 work injury was responsible for appellant's observed subjective and objective factors. He posited that, under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* for evaluating shoulder motion deficits (Table 15-34 on page 475), appellant's 170 degrees of right shoulder flexion equals a three percent impairment, his 160 degrees of right shoulder abduction equals a three percent impairment and his 70 degrees of right shoulder internal rotation equals a two percent impairment. Dr. Diamond stated that appellant had a *QuickDASH* form score of 86 which meant that he fell within Grade Modifier 4 on Table 15-7 (Function History Adjustment) on page 406.² Therefore, under Table 15-36 on page 477, appellant's impairment rating could be increased by 15 percent from 8 percent to 9 percent.³

On December 18, 2009 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon serving as an Office medical adviser, evaluated the medical evidence of record, including the October 20, 2009 report of Dr. Diamond, and provided an impairment rating. He indicated that, under the sixth edition of the A.M.A., *Guides*, the appropriate diagnostic category under Table 15-5 was impingement syndrome, Class 1, with a default value of Grade C (*i.e.*, residual loss, functional with normal motion). Dr. Berman indicated that the date of maximum medical improvement was October 20, 2009 and concluded that appellant had an eight percent permanent impairment of his right arm. He stated:

“However, in this case there was not normal motion and, therefore, the asterisk should apply with reference to Table 15-5, asterisk, stating, ‘If motion loss is present, this impairment may alternatively be assessed using [s]ection 15.7, Range Of Motion Impairment,’ page 475, Table 15-34: Shoulder Range of Motion. Applying Dr. Diamond's examination this equals three percent impairment for loss of flexion. Abduction 160 degrees, three percent impairment and internal rotation two percent for a total of eight percent impairment.

¹ Sensory examination failed to reveal any perceived dermatomal abnormalities in either the right or left upper extremity. Manual muscle strength testing of the upper extremities revealed the supraspinatus and deltoids were graded at 4/5 to 4+/5 on the right versus 5/5 on the left and that the triceps and biceps were graded at 5/5 bilaterally.

² The DASH in *QuickDASH* stands for disabilities of the arm, shoulder and hand. The *QuickDASH* form contains survey questions asking a given claimant to specify his or her ability to carry out various activities and the symptoms that he or she experiences while performing them.

³ After rounding down, adding 15 percent of 8 percent (0.12) to 8 percent equals 9 percent.

“Dr. Diamond then adds an additional one percent based on the DASH value, page 406. However, this value does not apply because the asterisk value was substituted with range of motion and, therefore, the functional history adjustment would not apply. Therefore, the additional one percent as recommended by Dr. Diamond is not recommended.”

In a January 4, 2010 decision, the Office granted appellant a schedule award for an eight percent permanent impairment of his right arm. The award ran for 24.96 weeks from October 10 to December 19, 2009. The award was based on the December 18, 2009 impairment rating of Dr. Berman.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation 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 regulations as the appropriate standard for evaluating schedule losses.⁶ For Office decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.⁷

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the shoulder, the relevant portion of the upper extremity for the present case, reference is initially made to Table 15-5 (shoulder regional grid) beginning on page 401.

ANALYSIS

The Office accepted that on February 6, 2004 appellant sustained sprains of his neck, right shoulder and right upper arm and disorder of the bursae and tendons of his right shoulder.⁸ On January 4, 2010 it granted appellant a schedule award for an eight percent permanent impairment of his right arm. The award was based on the December 18, 2009 opinion of Dr. Berman, a Board-certified orthopedic surgeon serving as an Office medical adviser, who had

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.*

⁷ See FECA Bulletin No. 9-03 (issued March 15, 2009). For Office decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

⁸ On September 9, 2004 appellant underwent authorized surgical repair for right rotator cuff and labral tears.

evaluated the October 20, 2009 findings and impairment calculation of Dr. Diamond, an attending osteopath.⁹

On appeal counsel argued that Dr. Diamond's rating showed that appellant has a nine percent permanent impairment of his right arm. The Board finds that the medical evidence of record shows that appellant has a nine percent permanent impairment of his right arm. As appellant already has received a schedule award for an eight percent permanent impairment of his right arm, he would be entitled to receive an additional award for a one percent permanent impairment of his right arm.

In his December 18, 2009 report, Dr. Berman indicated that, under the sixth edition of the A.M.A., *Guides*, the appropriate diagnostic category for appellant's right arm under Table 15-5 was impingement syndrome, Class 1.¹⁰ He stated that appellant's right shoulder motion was abnormal and therefore the portion of Table 15-5 marked by an asterisk would apply, *i.e.*, the portion stating, "If motion loss present, this impairment may alternatively be assessed using [s]ection 15.7, [r]ange [o]f [m]otion [i]mpairment." The portion of section 15.7 referenced by this text is Table 15-34 (shoulder range of motion) on page 475.¹¹ Dr. Berman then properly found that, under Table 15-34, appellant's 170 degrees of right shoulder flexion equals a three percent impairment, his 160 degrees of right shoulder abduction equals a three percent impairment and his 70 degrees of right shoulder internal rotation equals a two percent impairment.¹² He indicated that addition of these values rendered an eight percent impairment of appellant's right arm.

Dr. Berman indicated that Dr. Diamond incorrectly found that appellant has an additional one percent impairment rating for the score on his *QuickDASH* form and concluded that the total permanent impairment of his right arm is eight percent.¹³ However, the Board finds that Dr. Diamond properly determined that appellant has an additional one percent impairment rating for his *QuickDASH* score and therefore the total permanent impairment of his right arm is nine percent.

Dr. Diamond stated that appellant's *QuickDASH* score of 86 falls within Grade Modifier 4 under Table 15-7 (function history adjustment).¹⁴ Under Table 15-35 (range of motion grade modifiers) appellant's eight percent range of motion impairment falls within Grade Modifier 1.¹⁵

⁹ Dr. Berman indicated that Dr. Diamond's rating of a nine percent impairment of the right arm was not warranted.

¹⁰ It should be noted that Class 1, default value C (residual loss, functional with normal motion), for shoulder impingement syndrome under Table 15-5 is three percent. In cases where modifiers raise this default value, the highest possible value for shoulder impingement under Table 15-5 is five percent. A.M.A., *Guides* 402, Table 15-5 (shoulder regional grid).

¹¹ *Id.* at 475, Table 15-34 (shoulder range of motion).

¹² *Id.*

¹³ Dr. Berman stated that the *QuickDASH* score should not have been applied because Table 15-34 was used.

¹⁴ A.M.A., *Guides* 406, Table 15-7 (function history adjustment).

¹⁵ *Id.* at 477, Table 15-35 (range of motion grade modifiers).

Dr. Diamond then properly found that, under Table 15-36 (functional history grade adjustment), this difference in modifier grades means that appellant falls within Net Modifier 3 and his impairment rating could be increased by 15 percent from 8 percent to 9 percent.¹⁶

CONCLUSION

The Board finds that appellant has a nine percent permanent impairment of his right arm and that he is entitled to receive a schedule award for an additional one percent permanent impairment of his right arm.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2010 merit decision of the Office of Workers' Compensation Programs is affirmed as modified to reflect that appellant has a nine percent permanent impairment of his right arm.

Issued: November 12, 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

¹⁶ *Id.* at 477, Table 15-36 (functional history grade adjustment). After rounding down, adding 15 percent of 8 percent (0.12) to 8 percent equals 9 percent.