

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

---

**J.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Larchmont, NY, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 10-803  
Issued: October 7, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
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 February 16, 2010 appellant filed a timely appeal from the December 30, 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 the claim.

**ISSUE**

The issue is whether appellant has more than 10 percent impairment to his right upper extremity.

**FACTUAL HISTORY**

On April 20, 2007 appellant, then a 65-year-old postal carrier, filed a claim for a traumatic injury to his right arm on January 25, 2007 when he felt a sharp pain while casing mail. On April 4, 2006 he underwent right shoulder arthroscopic surgery, including subacromial decompression and mini open rotator cuff repair, performed by Dr. Young Don Oh, an attending Board-certified orthopedic surgeon. On May 8, 2007 Dr. Oh repeated these surgical procedures.

On August 9, 2007 the Office accepted appellant's claim for a right rotator cuff tear. On March 3, 2008 appellant filed a claim for a schedule award.<sup>1</sup>

On August 14, 2008 the Office asked appellant to provide an impairment rating from his attending physician based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*), including the date of maximum medical improvement, findings on physical examination, a description of subjective complaints and a recommended percentage of impairment.

On October 13, 2008 Dr. Oh provided findings on physical examination that included good active flexion and extension, good passive range of motion, good strength on resisted movements, no appreciable effusion and some discomfort with Job's sign. Subjective complaints included some right arm pain when appellant worked above his head and a locking sensation when lifting his arm. Based on state workers' compensation guidelines, Dr. Oh advised that appellant had approximately 15 percent right shoulder impairment.

On November 13, 2008 Dr. Henry J. Magliato, a Board-certified orthopedic surgeon and an Office medical adviser, found that appellant had 10 percent right upper extremity impairment based on Dr. Oh's October 13, 2008 report and the fifth edition of the A.M.A., *Guides*. There was no impairment for loss of strength or range of motion based on good strength and good active and passive range of motion. Appellant had 10 percent impairment for resection arthroplasty of the right shoulder, according to Table 16-27 at page 506 of the A.M.A., *Guides*.<sup>2</sup> Dr. Magliato noted that Dr. Oh's impairment rating was based on state impairment guidelines rather than the A.M.A., *Guides*.

On December 12, 2008 the Office advised Dr. Oh that federal workers' compensation impairment ratings were based on the A.M.A., *Guides*, not state impairment guidelines. It asked him to review Dr. Magliato's impairment rating and, if he disagreed, to explain his opinion of appellant's right upper extremity impairment with reference to specific tables in the A.M.A., *Guides*. There was no response from Dr. Oh.

In a February 6, 2009 decision, the Office granted appellant a schedule award for 10 percent right upper extremity impairment, for 31.2 weeks, from October 13, 2008 to May 19, 2009.<sup>3</sup> On July 8, 2009 it reissued the schedule award for 10 percent right upper extremity impairment, as it failed to send the February 6, 2009 decision to appellant's representative.

---

<sup>1</sup> Appellant has an occupational disease claim under OWCP File No. xxxxxx651 accepted for a disorder of bursae and tendons in the right shoulder and right rotator cuff syndrome.

<sup>2</sup> See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (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, especially when there is more than one evaluation of the impairment present).

<sup>3</sup> The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the upper extremity. 5 U.S.C. § 8107(c)(10). Multiplying 312 weeks by 10 percent equals 31.2 weeks of compensation.

Appellant requested a hearing that was held on October 13, 2009.

By decision dated December 30, 2009, an Office hearing representative affirmed the July 8, 2009 schedule award decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>4</sup> and its implementing regulations<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS**

The Board finds that appellant has no more than 10 percent right upper extremity impairment.

Dr. Oh provided findings on physical examination that included good strength and range of motion. Subjective complaints included some right arm pain when appellant worked above his head and a locking sensation when lifting his arm. Based on state workers' compensation guidelines, Dr. Oh found 15 percent right shoulder impairment. He did not explain his impairment rating with reference to specific portions of the fifth edition of the A.M.A., *Guides*. Dr. Oh advised that his impairment rating was based on state impairment guidelines. His report was properly referred to Dr. Magliato for application of Dr. Oh's findings to the A.M.A., *Guides*.

Dr. Magliato found that appellant had 10 percent right upper extremity impairment based on Dr. Oh's report and the fifth edition of the A.M.A., *Guides*. There was no impairment for strength or range of motion. Dr. Magliato found that appellant had 10 percent impairment for resection arthroplasty of the right shoulder, according to Table 16-27 at page 506 of the A.M.A., *Guides*, as appellant did not undergo total shoulder resection arthroscopy. He noted that Dr. Oh's impairment rating as based on state impairment guidelines rather than the A.M.A., *Guides*. The Office asked Dr. Oh to review Dr. Magliato's impairment rating and address any disagreement with reference to specific sections in the fifth edition of the A.M.A., *Guides*. Dr. Oh did not respond. The weight of the medical evidence of record establishes that appellant has 10 percent permanent impairment of the right arm.

The Board finds that the weight of the medical evidence establishes that appellant has no more than 10 percent right upper extremity impairment.

---

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404.

**CONCLUSION**

The Board finds that appellant has no more than 10 percent right upper extremity impairment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 30, 2009 is affirmed.

Issued: October 7, 2010  
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