

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

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**J.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cleveland, OH, Employer**

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**Docket No. 10-1973  
Issued: May 16, 2011**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge

COLLEEN DUFFY KIKO, Judge

MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 19, 2010 appellant filed a timely appeal from the May 18, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained permanent impairment of her right arm.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

The Office accepted appellant's claim for a right shoulder dislocation on May 26, 1987. She returned on July 6, 1987 in a modified capacity.<sup>2</sup> Appellant received compensation benefits.

On September 18 and October 10, 2009 appellant requested a schedule award.

By letter dated October 19, 2009, the Office advised appellant that she was last treated for her right shoulder on December 8, 1993. It noted that in cases where a significant length of time elapsed between a work injury and a request for compensation, it was the employees' responsibility to establish a cause and effect relationship between the original injury and current complaints. The Office requested that appellant provide a detailed narrative factual statement describing her general physical condition since the May 26, 1987 work injury and address a nonwork-related motor vehicle accident she sustained on January 4, 1988.<sup>3</sup> It also requested her employment status and copies of all medical records pertaining to her right shoulder. The Office noted that the medical evidence should provide a history of the May 26, 1987 work injury and any other injuries to the right shoulder, including the January 4, 1988 motor vehicle accident. Appellant was advised to submit medical evidence with objective findings and medical rationale, as to the issue of the causal relationship between her current right shoulder condition and the injury sustained at work.

In a December 14, 2009 letter, appellant's representative submitted new medical evidence that provided a date of maximum medical improvement and an impairment rating under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6<sup>th</sup> ed. 2008) (A.M.A., *Guides*).

In a November 15, 2009 report, Dr. William N. Grant, a Board-certified internist, noted appellant's history, completed a permanent impairment worksheet and provided an impairment rating. The history included that on May 26, 1987 appellant was tossing heavy mail sacks when she had a sudden onset of excruciating right shoulder pain due to a dislocation of her right shoulder. Dr. Grant noted that she received treatment but continued to have right shoulder pain. He examined appellant's right shoulder and found 80 degrees of flexion, 20 degrees of extension, 80 degrees of abduction and 20 degrees of adduction with internal rotation of 0 degrees. Dr. Grant advised that severe pain prevented testing of internal and external rotation. He referred to Table 15-5, Table 15-7 and Table 15-8 and completed an impairment rating worksheet finding 32 percent impairment to the right upper extremity.<sup>4</sup>

By decision dated January 20, 2010, the Office denied appellant's claim for a schedule award. It noted that Dr. Grant's report was based on an inaccurate history. The Office found

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<sup>2</sup> On October 14, 1987 appellant, filed a traumatic injury claim alleging that on that date she sustained an injury to her right arm in the performance of duty. The claim was denied and retired under File No. xxxxxxxx255

<sup>3</sup> The record indicates that the motor vehicle accident caused injury to the right shoulder and neck in addition to other parts of her body.

<sup>4</sup> A.M.A., *Guides* 405, 406, 408.

there was a 16-year gap in the medical evidence and that appellant had not submitted medical evidence responsive to its October 19, 2009 letter.

On January 23, 2010 appellant's representative requested a telephonic hearing, which was held on April 6, 2010.

On May 18, 2010 an Office hearing representative affirmed the January 20, 2010 decision.

### **LEGAL PRECEDENT**

Section 8107 of the Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>5</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>6</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.<sup>8</sup>

The Board notes that, before applying the A.M.A., *Guides*, the Office must determine whether the claimed impairment of a scheduled member is causally related to the accepted work injury.<sup>9</sup> A schedule award can be paid only for a condition related to an employment injury. Appellant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>10</sup>

### **ANALYSIS**

The evidence of record is insufficient to establish that appellant sustained permanent impairment of her right shoulder causally related to her accepted work injury. The Office accepted her claim for a right shoulder dislocation on May 26, 1987. Appellant claimed a schedule award on September 18, 2009. On October 19, 2009 the Office requested that she provide a medical report addressing her condition since her 1987 work injury, including a nonwork-related 1988 automobile accident. The requested medical evidence was not received.

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

<sup>9</sup> *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>10</sup> *Veronica Williams*, 56 ECAB 367 (2005).

Appellant provided a November 15, 2009 impairment rating from Dr. Grant who found 32 percent loss to the right upper extremity. The Board notes this report was not sufficient to establish entitlement to a schedule award as the physician did not address the time lapse between the work injury and the claim for a schedule award. Dr. Grant did not appear to be aware of a nonwork motor vehicle accident of January 4, 1988 or her employment history since May 26, 1987. The Board notes that the report is incomplete and cannot be utilized. Dr. Grant only addressed the initial injury of May 26, 1987, despite evidence of another injury in October 1987 and the motor vehicle accident on January 4, 1988. As noted, a schedule award can be paid only for a condition related to an employment injury.<sup>11</sup> A claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment. The Office's October 19, 2009 letter advised appellant regarding the need for a detailed report due to the length of time and other factors that could have contributed to her condition. The report from Dr. Grant did not address these concerns. It is well established that medical reports must be based on a complete and accurate factual and medical background or they are of little probative value.<sup>12</sup> Dr. Grant did not provide a medically-rationalized opinion, based upon an accurate history, in which he explained why any permanent impairment was caused or aggravated by the May 26, 1987 work injury and why it would not be attributable to nonemployment factors, such as the 1988 motor vehicle accident.<sup>13</sup> His opinion is insufficient to establish that appellant sustained permanent impairment of the right arm causally related to the May 26, 1987 work injury.

Appellant did not submit any other medical evidence to support that she has permanent impairment causally related to her accepted work injury.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's claim for a schedule award.

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<sup>11</sup> *See id.*

<sup>12</sup> *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>13</sup> *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 18, 2010 is affirmed.

Issued: May 16, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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