

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SUNG J. SCHWANDT and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Santa Ana, CA

*Docket No. 98-2516; Submitted on the Record;  
Issued April 21, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has greater than a seven percent permanent loss of use of the right arm.

The Office of Workers' Compensation Programs accepted that appellant sustained a right shoulder strain and rotator cuff tear on October 7, 1985 by pulling sacks of mail. With the Office's approval appellant underwent an arthroscopic decompression of her shoulder on July 14, 1987. Appellant returned to part-time limited duty on May 22, 1989 and to full-time limited duty on June 19, 1989.

On April 8, 1998 appellant filed a claim for a schedule award. On June 19, 1998 an Office medical adviser reviewed the medical evidence and applied the tables of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the findings reported on an April 27, 1990 examination by appellant's Board-certified orthopedic surgeon, Dr. Carlos A. Prietto. The Office medical adviser stated:

“According to the A.M.A., *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, the right upper extremity impairment can be determined as follows:

“Impairment due to loss of range of motion: [F]or the shoulder, loss of flexion, 1 percent, and loss of extension, 0 percent (Figure 38, page 43); loss of abduction, 0 percent, and loss of adduction, 0 percent (Figure 41, page 44); loss of internal rotation, 1 percent, and loss of external rotation, 0 percent (Figure 44, page 45). Total 2 percent.

“Impairment due to sensory deficit or pain: Level of impairment as grade 2 and 4, 25 percent (Tables 11 and 12, pages 48 and 49). Maximum

combined impairment based on the suprascapular nerve is 20 percent (Table 15, page 54). 25 percent x 20 percent = 5 percent.

“The total impairment for the right upper extremity equals seven percent.

“The date of maximal improvement is April 27, 1990.”

On July 24, 1998 the Office issued appellant a schedule award for a seven percent permanent loss of use of her right arm.

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>3</sup>

The Board finds that the case is not in posture for a decision.

In a report dated January 8, 1988, appellant’s attending physician, Dr. Prietto, stated that appellant’s condition had stabilized. In a report dated February 22, 1989, he stated that appellant’s condition was unchanged from a year ago and in a report dated June 25, 1990, Dr. Prietto stated that appellant’s condition had not changed in the past couple of years. These reports from Dr. Prietto clearly and convincingly show that appellant had reached maximum medical improvement by April 27, 1990, and it was, therefore, proper for the Office to use the findings in Dr. Prietto’s April 27, 1990 report to rate appellant’s schedule award.<sup>4</sup>

It was also proper for an Office medical adviser to apply the tables of the A.M.A., *Guides* to the findings reported by Dr. Prietto, as Dr. Prietto’s estimate of a 15 percent permanent impairment of the right arm in his April 27, 1990 report was not derived by using the A.M.A., *Guides*.<sup>5</sup> An Office medical adviser properly applied the tables of the A.M.A., *Guides* to rate appellant’s impairment due to loss of motion by assigning 1 percent for 170 degrees of flexion reported by Dr. Prietto and 1 percent for 70 degrees of internal rotation. The assignment of 0 percent for the other reported ranges of motion -- 65 degrees of external rotation, 65 degrees

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> *Quincy E. Malone*, 31 ECAB 846 (1980).

<sup>4</sup> *See Alsine Johnson*, 42 ECAB 619 (1991).

<sup>5</sup> *Michael C. Norman*, 42 ECAB 768 (1991); *Roel Santos*, 41 ECAB 1001 (1990).

of extension, 165 degrees of abduction and 50 degrees of adduction -- were also proper under the tables of the A.M.A., *Guides*.

As pain must be calculated according to the tables of the A.M.A., *Guides*,<sup>6</sup> it was proper for an Office medical adviser to attempt to rate appellant's permanent impairment due to pain by identifying the affected nerve from Table 15 of Chapter 3 of the A.M.A., *Guides* and grading the severity of the pain using the classifications of Table 11. However, because this Office medical adviser did not make any specific reference to Dr. Prietto's findings in assigning grade 2 for the severity of the pain, the Board is unable to determine whether appellant's pain should have been assigned grade 2, described in Table 11 as "[d]ecreased sensibility with or without abnormal sensation or pain, which is forgotten during activity," or grade 3, described in Table 11 as "[d]ecreased sensibility with or without abnormal sensation or pain, which interferes with activity." With reference to appellant's pain, Dr. Prietto stated in his January 8, 1988 and June 25, 1990 reports that she had symptoms of right shoulder discomfort with repetitive overhead activities and with rotational activities with her right shoulder. The case will be remanded to the Office for an Office medical adviser to assign a grade for appellant's pain using Table 11 of Chapter 3 of the A.M.A., *Guides*, with specific reference to Dr. Prietto's findings.<sup>7</sup> The percentage of appellant's permanent loss of use of the right arm should then be recalculated by the Office and an appropriate decision issued.

The decision of the Office of Workers' Compensation Programs dated July 24, 1998 is set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
April 21, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> *Leisa D. Vassar*, 40 ECAB 1287 (1989).

<sup>7</sup> *See Lena P. Huntley*, 46 ECAB 643 (1995).