

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of OTIS WILLIAMS and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 00-824; Submitted on the Record;  
Issued February 22, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has greater than a 24 percent permanent impairment of his right upper extremity, for which he has received a schedule award.

The Office of Workers' Compensation Programs accepted that on January 19, 1999 appellant, then a 49-year-old distribution clerk, sustained right shoulder strain and cervical strain with radiculopathy while in the performance of duty. On May 13, 1999 appellant filed a claim for a schedule award.

In support, appellant submitted an April 13, 1999 report from Dr. Robert W. Chow, a Board-certified neurological surgeon, which noted that appellant had right-sided C7 radiculopathy, minimal restriction of neck movement, increasing neck pain with extreme extension and turning to the left, triceps weakness, triceps atrophy, but equal and 2+ bilateral tendon reflexes at the biceps. Dr. Chow indicated that appellant would benefit from surgery but that he refused.

On June 21, 1999 Dr. Fred Blackwell, a Board-certified orthopedic surgeon, noted that appellant complained of increased discomfort and pain with neck extension, forward flexion, lateral bending and rotation, and that he had right trapezius tenderness. On June 28, 1999 Dr. Blackwell noted that appellant presented with increased pain without specific provocation. On August 4, 1999 Dr. Blackwell reported that appellant was relatively stable with no new problems.

By report dated August 20, 1999, Dr. Blackwell reported appellant's range of cervical motion and noted that the right shoulder examination revealed limited internal rotation and external rotation of 50 percent of normal at 35 to 40 degrees. He reported appellant's right shoulder range of motion as follows: abduction 90/150 degrees; extension 45/45 degrees; forward flexion 90/150; and adduction 0/40 degrees. Dr. Blackwell reported right arm atrophy as .5 cm (arm circumference of 34.5 cm on the right; 35 cm on the left) and reported grip

strength testing results. He noted that appellant also had intermittent slight to moderate pain, aggravated by activity.

On October 11, 1999 Dr. Blackwell's report was evaluated by Dr. Ellen Pichey, an Office medical adviser, who noted that according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fourth edition, (1993) appellant's right upper extremity impairment was determined as follows:

“Impairment due to loss of range of motion: for the shoulder, loss of flexion, 6 percent, and loss of extension, 0 percent (Figure 38, page 43); loss of abduction, 4 percent, and loss of adduction, 0 percent (Figure 41, page 44); loss of internal rotation, 4 percent, and loss of external rotation, 1 percent (Figure 44, page 45). Total 15 percent.

“Impairment due to loss of strength and 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 C7 nerve is 38 percent (Table 15, page 54). 25 percent [times] 38 percent = 10 percent.

“Using the Combined Values Chart, page 322, the total impairment for the right upper extremity equals 24 percent.”

Dr. Pichey opined that the date of maximum improvement was August 20, 1999.

On October 22, 1999 the Office granted appellant a schedule award for a 24 percent impairment of his right upper extremity for the period August 20, 1999 to January 25, 2001 for a total of 74.88 weeks of compensation.

The Board finds that appellant has a 25 percent permanent impairment of his right upper extremity.

The Federal Employees' Compensation Act<sup>1</sup> provides compensation for both disability and physical impairment. “Disability” means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.<sup>2</sup> In such cases, the Act compensates an employee for loss of wage-earning capacity. In cases of physical impairment, the Act compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

<sup>3</sup> See *Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986).

The schedule award provisions of the Act<sup>4</sup> specify the number of weeks of compensation to be paid for permanent loss of use of various members of the body. The Act does not, however, specify the manner in which the percentage loss of use of a member shall be determined. The method used in making such a determination is a matter that rests with the sound discretion of the Office.<sup>5</sup> 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.<sup>6</sup> The Office has adopted the A.M.A., *Guides* as the standard for evaluating permanent impairment for schedule award purposes and the Board has concurred with the Office's adoption of this standard.<sup>7</sup>

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.<sup>8</sup> All factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment. Chapter 3.1k of the A.M.A., *Guides* (4<sup>th</sup> ed.) provides a grading scheme and procedure for determining impairment of the upper extremity due to pain, discomfort, or loss of sensation.<sup>9</sup> The element of pain may serve as the sole basis for determining the degree of impairment for schedule compensation purposes.<sup>10</sup>

In this case, Dr. Blackwell reported appellant's right shoulder range of motion as follows: abduction 90/150 degrees; extension 45/45 degrees; forward flexion 90/150; and adduction 0/40 degrees; he reported right arm atrophy as .5 cm, reported grip strength testing results and noted that appellant had intermittent slight to moderate pain.<sup>11</sup>

The Office medical adviser applied the A.M.A., *Guides* to the results of Dr. Blackwell's August 20, 1999 examination. Dr. Pichey calculated the range of motion deficit at a total of 15

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>6</sup> *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

<sup>7</sup> *Donald Mueller*, 32 ECAB 324 (1980); *Anne E. Hughes*, 27 ECAB 106 (1975); *Theodore P. Richardson*, 25 ECAB 113 (1973).

<sup>8</sup> *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

<sup>9</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993), page 46.

<sup>10</sup> *Paul A. Toms*, 38 ECAB 403 (1987); *Robin L. McClain*, 38 ECAB 398 (1987).

<sup>11</sup> Dr. Blackwell also reported limited range of cervical motion but the Board notes that no schedule award is payable for a member, function, or organ of the body not specified in the Act or in the regulations. *William Edwin Muir*, 27 ECAB 579 (1976). Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award. See *Severiano Marquez*, 41 ECAB 637 (1990); *Timothy J. McGuire*, 34 ECAB 189 (1982). The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19). See *Francesco C. Veneziani*, 48 ECAB 572 (1997).

percent, indicating that there was no impairment due to loss of adduction. The Board notes, however, that Dr. Blackwell designated shoulder adduction of zero percent, which represents a two percent impairment of the upper extremity under the protocols of the A.M.A., *Guides*.<sup>12</sup> The Board finds a total loss of range of motion to appellant's right shoulder of 17 percent. Applying the Combined Value Chart to the 10 percent sensory impairment, appellant has a 25 percent impairment of his right upper extremity.<sup>13</sup>

The October 22, 1999 schedule award determination of the Office will be modified to reflect that appellant has a total of 25 percent impairment of his right upper extremity.

As appellant has submitted no probative medical evidence supporting that he has any greater right upper extremity impairment, he has failed to support his contentions.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 22, 1999 is hereby affirmed.

Dated, Washington, DC  
February 22, 2001

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>12</sup> Figure 41, page 44.

<sup>13</sup> Combined Value Chart, page 322.