

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIO J. LOPREORE and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 01-1269; Submitted on the Record;
Issued February 15, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a two percent loss of use of the left upper extremity for which he received a schedule award.

The Board has duly reviewed the record and finds that appellant is not entitled to more than a two percent loss of use of the left upper extremity.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

The Office accepted appellant's claim for a contusion in the back, right and left elbow abrasions, left shoulder and lumbar strain, left rotator cuff tear, and left shoulder arthroscopy.

In a report dated August 4, 2000, appellant's treating physician, Dr. Joseph Rauchwerk, a Board-certified orthopedic surgeon, stated that appellant underwent surgery to his left shoulder and "has been diagnosed with a permanent 15 percent to 20 percent anatomical disability in the left shoulder."

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

On August 12, 2000 appellant filed a claim for a schedule award.

In a report dated January 18, 2001, Dr. John R. Montz, a referral physician and Board-certified orthopedic surgeon, considered appellant's history of injury, reviewed a 1995 magnetic resonance imaging scan and an x-ray which showed no ectopic calcification or significant abnormality. On physical examination he found that appellant had abduction of the left shoulder to 90 degrees at the glenohumeral joint which was identical to the uninvolved side. Dr. Montz stated that appellant flexed to 160 degrees compared to 180 degrees on the uninvolved side. He stated that internal rotation was within normal limits and external rotation on the left side was limited to 25 degrees compared to 80 to 85 degrees on the uninvolved side. Dr. Montz stated that appellant had a negative impingement test and negative apprehension, and reported discomfort with external rotation.

He stated that appellant's motor strength was within normal limits although the grip strength on the left was slightly less than the right. Dr. Montz stated that sensation was intact and there was no evidence of atrophy, although the left biceps was one centimeter less than the right. Stating that he used the "A.M.A., *Guides*," Dr. Montz found that appellant had a one percent permanent impairment of his left shoulder due to flexion loss and a one percent permanent impairment due to external rotation loss which resulted in a two percent permanent impairment to the left upper extremity.

On a form dated February 6, 2001, Dr. Montz stated that appellant had reached maximum medical improvement and had mild discomfort but no weakness or atrophy.

In a report dated February 6, 2001, the Office medical adviser stated that appellant reached maximum medical improvement on January 18, 2001. He used Figures 38, 41, and 44, pp. 43-45 of the A.M.A., *Guides* (4th ed. 1994) to determine that appellant's flexion of 160 degrees equaled a 1 percent permanent impairment of the left shoulder and appellant's external rotation of 25 degrees equaled a 1 percent impairment. Therefore, appellant had a total permanent impairment of 2 percent to the left upper extremity.

By decision dated February 21, 2001, the Office issued appellant a schedule award for a two percent loss of the use of the left upper extremity.

In this case, Dr. Rauchwerk's August 4, 2000 opinion that appellant had a permanent 15 to 20 percent disability to his left shoulder is not probative because he did not give reasons for his findings and did not use A.M.A., *Guides* in reaching his conclusion. It is well settled that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant based on the A.M.A., *Guides*. If an attending physician does not use the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment.⁴

⁴ See *Paul R. Evans*, 44 ECAB 646, 651 (1993); *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

The Office, however, erred in issuing the schedule award pursuant to the A.M.A., *Guides* (4th ed. 1994) because the A.M.A., *Guides* (5th ed. 1995) became effective February 1, 2001,⁵ and therefore the Office should have used the fifth edition of the A.M.A., *Guides* in determining appellant's entitlement to a schedule award. This error is harmless, however, because appellant's resulting upper extremity impairment would have been the same if calculated under the fifth edition of the guides.

In his January 18, 2001 report, Dr. Montz found that appellant had flexion of 160 degrees, external rotation of 25 degrees, normal internal rotation and abduction, intact sensation and no atrophy and negative impingement and apprehension. Stating that he used the "AMA Guides" to determine that appellant's flexion of 160 degrees and external rotation of 25 degrees each resulted in a 1 percent impairment, he concluded that appellant had a total impairment of 2 percent to his left upper extremity. Using the A.M.A., *Guides* (4th ed. 1994), the district medical adviser relied on Dr. Montz's physical findings, and determined that according to Figures 38, 41, and 44, pp. 43-45, appellant's flexion of 160 degrees and external rotation of 25 degrees each equaled a 1 percent impairment or a total permanent partial impairment to the left upper extremity of 2 percent. The district medical adviser's use of Figures 38, 41, and 44 correspond exactly to Figures 16-40, 16-43 and 16-46, pp. 476, 477 and 479, in the A.M.A., *Guides* (5th ed. 1995) and therefore the district medical adviser's conclusion would have been the same under the fifth edition. His opinion is therefore proper and constitutes the weight of the evidence.

The February 21, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 15, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ FECA Bulletin No. 01-05 (issued January 29, 2001).