

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD R. MUIRHEAD and U.S. POSTAL SERVICE,
POST OFFICE, Benton Harbor, MI

*Docket No. 03-1091; Submitted on the Record;
Issued July 21, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a five percent permanent impairment of his right upper extremity (RUE), for which he received a schedule award.

On October 25, 1999 appellant, then a 48-year-old city letter carrier, filed a traumatic injury claim alleging that on October 14, 1999 he pulled or strained a muscle in his right upper arm while lifting a tray of mail. On November 23, 1999 the Office of Workers' Compensation Programs accepted the claim for right shoulder strain. Appellant stopped work on October 22, 1999 and returned to work on November 1, 1999 for four hours per day. Appellant returned to full-time limited duty on January 10, 2000.

On March 2, 2000 appellant filed a recurrence of disability claim alleging that on January 26, 2000 his right shoulder began giving him "considerable" pain when lifting or reaching above his shoulder to the point that the pain was intolerable. Appellant indicated that he stopped work on January 27, 2000 and returned to work on February 9, 2000. The Office accepted the recurrence of disability as due to the original October 16, 1999 injury, added shoulder impingement syndrome as an accepted condition due to the October 16, 1999 work injury and authorized arthroscopic surgery. Appellant underwent surgery on March 22, 2000 and for a period of time stopped work.¹

On January 4, 2002 the Office requested that Dr. George Kolettis, appellant's attending physician and Board-certified orthopedic surgeon, provide an assessment of appellant's permanent impairment related to the accepted employment injury. He replied that he does not perform permanent impairment evaluations. On April 17, 2002 the Office referred appellant to Dr. Ronald Rook, an osteopath and Board-certified orthopedic surgeon, for a second opinion

¹ On October 6, 2001 appellant was reemployed as a modified city carrier. In a decision dated January 4, 2002, the Office determined that the wages of the position reasonably and fairly represented his wage-earning capacity and therefore appellant was not entitled to wage-loss compensation. Appellant has not appealed this decision.

examination concerning appellant's work-related condition and an assessment of permanent impairment of appellant's right arm.

In a report dated May 30, 2002, Dr. Rook reviewed appellant's occupational history, his medical records, current condition and his examination of appellant. Dr. Rook stated:

"In my opinion, the examinee has reached maximum medical improvement. I feel this occurred approximately four months ago....

"Using the A[merican] M[edical] A[ssociation], *Guides to the Evaluation of Permanent Impairment*, [f]ifth [e]dition, Figure 16-40, page 476, Figure 16-43, page 477, Figure 16-46, page 479, impairment for decreased shoulder range of motion would be: abduction of 150 degrees 1 percent impairment; flexion of 160 degrees 1 percent impairment; no impairment for external rotation, internal rotation to 60 degrees 2 percent impairment; and adduction of 20 degrees 1 percent impairment. Total impairment of the upper extremity due to decreased range of motion would be five percent.

"Using the A.M.A., *Guides to the Evaluation of Permanent Impairment*, [f]ifth [e]dition, Table 16-35, page 510, impairment for strength deficit would be: abduction four percent impairment; adduction two percent impairment; and internal and external rotation two percent each. There would be no impairment for flexion and extension. Total impairment for strength deficit would be 10 percent.

"Combining 5 percent impairment for decreased range of motion and 10 percent impairment for strength deficit equals 15 percent impairment of the upper extremity. Using Table 16-3, page 439, 15 percent impairment of the upper extremity equals 9 percent impairment of the whole person."

Dr. Rook submitted a supplemental report dated August 20, 2002 in which he stated that, at the time of his examination on May 15, 2002, appellant had a slight (30 percent) loss of abduction and adduction strength.

An Office medical adviser reviewed Dr. Rook's findings on September 3, 2002, noted that appellant reached maximum medical improvement in January 2002 and calculated appellant's impairment rating of the RUE. He indicated that according to Figure 16-43 on page 477 abduction of 150 degrees equaled 1 percent impairment and adduction of 20 degrees equaled 1 percent impairment. The medical adviser indicated that according to Figure 16-46 on page 479 external rotation of 70 degrees did not equate to an impairment and 60 degrees of internal rotation equaled 2 percent impairment. The district medical adviser noted that according to Figure 16-40 on page 476 flexion of 160 degrees equaled 1 percent impairment. The adviser concluded that appellant had a permanent partial impairment (PPI) of five percent. The adviser further outlined: "The total PPI for RUE is five percent. The strength impairment calculated should not be additive to the ROM [range of motion] impairment calculation per section 16.8 (page 508). Decreased strength cannot be rated in the presence of decreased motion."

By decision dated September 17, 2002, the Office issued appellant a schedule award for five percent permanent impairment of the right arm. The period of the award was 15.60 weeks from May 15, 2002. In a letter dated October 12, 2002, appellant requested a review of the written record.

By decision dated March 6, 2003, an Office hearing representative affirmed the prior decision finding that the second opinion orthopedist properly applied the A.M.A., *Guides* in determining that appellant was entitled to no more than a five percent permanent impairment of the RUE.

The Board finds that appellant is entitled to no more than a five percent permanent impairment of his RUE, for which he has received a schedule award.

Section 8107 of the Federal Employees' Compensation Act² 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.³ 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.⁴ The Act's implementing regulation has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule award losses.⁵ As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁶

In this case, the second opinion orthopedic surgeon, Dr. Rook, provided results on examination and a description of the impairment to appellant's right arm. He indicated that appellant had reached maximum medical improvement as of the date of the examination on May 15, 2002. With respect to the degree of impairment, Dr. Rook reported on May 30, 2002 that appellant had a 15 percent impairment of the upper extremity which he concluded equaled a 9 percent impairment of the whole person, based on the fifth edition of the A.M.A., *Guides*. The Act does not provide for permanent partial impairment of the whole person.⁷ Further, as discussed below, the referral physician improperly added the strength impairment to that of range of motion to reach his impairment rating of 15 percent.

The Board finds that the Office medical adviser's September 3, 2002 report represents the weight of the medical evidence as he properly applied the A.M.A., *Guides* to the objective findings to determine appellant's impairment rating. The medical adviser reviewed Dr. Rook's reports and found five percent impairment due to decreased range of motion, according to Tables

² 5 U.S.C. §§ 8101-8109.

³ 5 U.S.C. § 8107.

⁴ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁵ 20 C.F.R. § 10.404 (1999).

⁶ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁷ *John Year*, 48 ECAB 243, 247 (1997).

16-40 (upper extremity motion impairments due to lack of flexion and extension of shoulder), 16-43 (upper extremity impairments due to lack of abduction and adduction of shoulder) and 16-46 (upper extremity impairments due to lack of internal and external rotation of shoulder) on pages 476, 477 and 479 of the fifth edition of the A.M.A., *Guides*. As noted by the medical adviser, section 16.8a on page 508 of the A.M.A., *Guides* provides that the loss of strength impairment should be rated separately in an extremity that presents other impairments and the impairment ratings based on objective anatomic findings such as decreased range of motion takes precedence.⁸ Therefore, the district medical adviser properly calculated appellant's impairment due to decreased range of motion in this case.

Inasmuch as the Office properly applied the fifth edition of the A.M.A., *Guides* to the medical evidence, appellant is entitled to no more than a five percent permanent impairment of his RUE.

The decisions of the Office of Workers' Compensation Programs dated March 6, 2003 and September 17, 2002 are affirmed.

Dated, Washington, DC
July 21, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ A.M.A., *Guides* at 508.