

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

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**T.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Dallas, TX, Employer**

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**Docket No. 07-2019  
Issued: January 11, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 31, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 22, 2007 merit decision concerning his entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he has more than a nine percent permanent impairment of his right arm, for which he received a schedule award.

**FACTUAL HISTORY**

The Office accepted that on February 1, 2003 appellant, then a 48-year-old mail carrier, sustained a sprain/strain of his right shoulder and upper arm due to opening the door of his delivery vehicle while seated. Appellant did not stop work but began working in a limited-duty position for the employing establishment. He participated in regular physical therapy sessions.

In March 2003, Dr. Olayinka Ogunro, an attending Board-certified orthopedic surgeon, diagnosed impingement syndrome of the right shoulder and carpal tunnel syndrome of the right wrist.<sup>1</sup> The findings of a February 27, 2003 magnetic resonance imaging scan of the right shoulder showed moderate supraspinatus tendinitis associated with a partial articular surface tear. The findings of a July 17, 2003 electromyogram and nerve conduction testing of both arms showed bilateral median nerve mononeuropathies.

On October 23, 2003 Dr. Ogunro noted that appellant reported that he had no right shoulder pain and felt that he had good right shoulder mobility. He indicated that appellant had a negative Tinel's sign and Phalen's test bilaterally but diagnosed bilateral carpal tunnel syndrome. On February 12, 2004 Dr. Ogunro noted that appellant reported that he had no right shoulder pain and indicated that the examination showed that right shoulder motion was normal.

On August 3, 2006 Dr. Ogunro indicated that appellant complained of bilateral shoulder tendinitis with restricted motion. He indicated that range of motion testing showed that appellant had a two percent permanent impairment due to 150 degrees of flexion, a two percent impairment due to 20 degrees of extension, a one percent impairment due to 20 degrees of adduction, a two percent impairment due to 140 degrees of abduction, a two percent impairment due to 50 degrees of internal rotation and a zero percent impairment due to 60 degrees of external rotation.<sup>2</sup>

On March 6, 2007 Dr. Henry Mobley, an Office medical adviser and Board-certified internist, reviewed the medical evidence of record, including the evaluations of Dr. Ogunro and determined that appellant sustained a nine percent permanent impairment of his right shoulder due to limited motion under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001). He indicated that the date of maximum medical improvement was August 3, 2006.

In a May 22, 2007 decision, the Office granted appellant a schedule award for a nine percent permanent impairment of his right arm. The award ran for 28.08 weeks from August 3, 2006 to February 15, 2007.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulations<sup>4</sup> 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

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<sup>1</sup> Dr. Ogunro indicated that appellant had a positive Tinel's sign on the right and diminished sensation to light touch over the median innervated digits, but that two-point discrimination testing was normal.

<sup>2</sup> Dr. Ogunro also provided impairment calculations for appellant's left shoulder and right knee. On December 4, 2006 he diagnosed bilateral carpal tunnel syndrome and indicated that appellant had a 10 percent permanent impairment of each arm due to sensory loss associated with the median nerve.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

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 implementing regulation as the appropriate standard for evaluating schedule losses.<sup>5</sup> It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.<sup>6</sup>

### ANALYSIS

The Office accepted that on February 1, 2003 appellant sustained a sprain/strain of his right shoulder and upper arm due to opening the door of his delivery vehicle while seated. In a May 22, 2007 decision, it granted appellant a schedule award for a nine percent permanent impairment of his right arm.

On March 6, 2007 Dr. Mobley, an Office medical adviser and Board-certified internist, reviewed the medical evidence of record, including the evaluations of Dr. Ogunro, an attending Board-certified orthopedic surgeon. The Board finds that Dr. Mobley properly determined that appellant had a nine percent permanent impairment of his right arm which was comprised of a two percent permanent impairment due to 150 degrees of flexion, a two percent impairment due to 20 degrees of extension, a one percent impairment due to 20 degrees of adduction, a two percent impairment due to 140 degrees of abduction and a two percent impairment due to 50 degrees of internal rotation.<sup>7</sup> Dr. Mobley indicated that the date of maximum medical improvement was August 3, 2006, the date of Dr. Ogunro's evaluation.

Dr. Ogunro also provided impairment calculations for appellant's left shoulder and right knee on August 3, 2006. However, the Office has not accepted that appellant sustained an employment-related left shoulder or right knee injury. On December 4, 2006 Dr. Ogunro diagnosed bilateral carpal tunnel syndrome and indicated that appellant had a 10 percent permanent impairment of each arm due to sensory loss associated with the median nerve. It also has not been accepted that appellant sustained employment-related carpal tunnel syndrome. The record does not contain any claim by appellant that he sustained an employment-related right knee, left shoulder or carpal tunnel condition. Moreover, there is no evidence in the record that he had an impairment due to a right carpal tunnel condition which preexisted his February 1, 2003 employment injury.<sup>8</sup> There is no basis to include these conditions in an assessment of appellant's entitlement to schedule award compensation.

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<sup>5</sup> *Id.*

<sup>6</sup> See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b. (June 1993). This portion of Office procedure provides that the impairment rating of a given scheduled member should include, "any preexisting permanent impairment of the same member or function."

<sup>7</sup> See A.M.A., *Guides* 476-77, 479, Figures 16-40, 16-43 and 16-46. Dr. Mobley properly added these values to yield a nine percent impairment.

<sup>8</sup> See *supra* note 6 and accompanying text.

Appellant has not submitted any medical evidence showing that he has more than a nine percent permanent impairment of his right arm. Therefore, the Office properly granted him schedule award compensation for a nine percent permanent impairment of his right arm.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he has more than a nine percent permanent impairment of his right arm, for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' May 22, 2007 decision is affirmed.

Issued: January 11, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board