

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ISABEL C. DEGROUCHY and U.S. POSTAL SERVICE,
POST OFFICE, Capitol Heights, Md.

*Docket No. 97-2479; Submitted on the Record;
Issued June 1, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she has more than a seven percent permanent impairment of the right upper extremity.

The Board has duly reviewed the case record and finds that this case is not in posture for a decision.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a distribution clerk, sustained tendinitis of the right shoulder and arm in the performance of her federal employment on May 3, 1993. Appellant underwent right shoulder arthroplasty on January 5, 1995 which the Office also accepted was causally related to the accepted employment injury. On May 21, 1996 the Office granted appellant a schedule award for a seven percent permanent impairment of the right upper extremity. On June 18, 1997 an Office hearing representative affirmed the schedule award.

The Office hearing representative noted that appellant's treating physician, Dr. Denis R. Harris, had reported physical examination findings regarding appellant's right shoulder; that he had also noted that appellant's main problem was that when she used her arm too much at work, she developed shooting pain in the right shoulder, Dr. Harris recommended therefore that appellant never lift above shoulder height or throw mail. He concluded that due to weakness of the right shoulder, scarring and continued pain, appellant had a 20 percent permanent impairment of the right shoulder.

Section 8107 of the Federal Employees' Compensation Act¹ provides that, if there is a permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. For consistent results and to insure equal justice, the Board has authorized the use

¹ 5 U.S.C. § 8107.

of a single set of tables so that there may be uniform standards applicable to all claimants in the evaluation of permanent physical impairment. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.²

The Board has long held that a medical opinion regarding permanent impairment which is not based upon the A.M.A., *Guides*, the standard adopted by the Office and approved by the Board as appropriate for evaluating schedule losses, was of little probative value in determining the extent of a claimant's permanent impairment.³ Because Dr. Harris' opinion regarding the degree of permanent impairment did not indicate how he had calculated appellant's impairment pursuant to the A.M.A., *Guides*, it was of little probative value, the Office properly requested that the Office medical adviser review Dr. Harris' reports and determine the extent of appellant's permanent impairment pursuant to the A.M.A., *Guides*.

The Board has reviewed the examination findings reported by Dr. Harris and the calculation of permanent impairment, pursuant to the A.M.A., *Guides*, provided by the Office medical adviser. The Board concurs with the finding that pursuant to figure 38,⁴ appellant has a 2 percent permanent impairment of the shoulder for flexion to 150 degrees and a 1 percent impairment for extension to 40 degrees. Pursuant to figure 41,⁵ appellant has a 1 percent permanent impairment for abduction to 150 degrees and pursuant to figure 44⁶ appellant has a 3 percent impairment for internal rotation to 40 degrees. The Office medical adviser properly calculated that appellant had a seven percent permanent impairment due to loss of motion of the right shoulder.

The Board notes, however, that Dr. Harris, continued to note that appellant's primary impairment of the shoulder was pain and weakness. He stated that appellant would be restricted from work above shoulder level and from throwing mail as such activities caused a shooting pain. Dr. Harris assigned appellant a 20 percent permanent impairment of the right upper extremity due to pain and weakness of the shoulder. The Office hearing representative made a finding that appellant was not entitled to a schedule award for pain because the "A.M.A., *Guides* state that a consideration of pain is included in the values accorded for loss of range of motion." The A.M.A., *Guides* do, however, allow for impairment due to pain resulting from a peripheral nerve disorder, in addition to an impairment for loss of motion, as long as the loss of motion impairment is not solely caused by a peripheral nerve lesion. In this regard, the A.M.A., *Guides* stated that: "[w]hen multiple impairment of the extremity are present, such as amputation, loss of motion, or vascular disorder, the peripheral nerve impairment is combined with the other impairments using the Combined Values Chart..."⁷ The A.M.A., *Guides* further explain that

² *James J. Hjort*, 45 ECAB 595 (1994).

³ *James Kennedy, Jr.*, 40 ECAB 620 (1989).

⁴ A.M.A., *Guides*, Fourth edition at page 3/43.

⁵ A.M.A., *Guides*, Fourth edition at page 3/44.

⁶ A.M.A., *Guides*, Fourth edition at page 3/45.

⁷ A.M.A., *Guides*, Fourth edition at page 3/49.

“[i]f an impairment results strictly from a peripheral nerve lesion, the physician should not apply impairment percent from [s]ection 3.lf through 3.lj [loss of motion] of this chapter and this section, because a duplication and an unwarranted increase in the impairment percent would result.” As the record does not indicate that appellant’s right shoulder impairment was caused strictly by a peripheral nerve lesion, appellant would remain entitled to an award for permanent impairment due to pain and weakness, in addition to permanent impairment caused by loss of motion.

On remand, the Office shall further develop the record as necessary to determine any permanent impairment caused by pain and weakness of appellant’s right shoulder. After such further development as necessary, the Office shall issue an appropriate decision.

The decision of the Office of Workers’ Compensation Programs dated June 18, 1997 is hereby set aside and this case is remanded to the Office for further development consistent with this opinion.

Dated, Washington, D.C.
June 1, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member