

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Gaithersburg, MD

*Docket No. 99-735; Submitted on the Record;
Issued December 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained any additional permanent impairment to her right upper extremity causally related to her employment injury.

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

The record reflects that appellant sustained right ulnar neuritis and right carpal tunnel syndrome in the performance of duty on August 15, 1990 and a cervical strain and bilateral shoulder strain in the performance of duty on May 1, 1992.¹ By decision dated January 27, 1992, the Office of Workers' Compensation Programs granted appellant a schedule award based upon a 23 percent permanent impairment of the right upper extremity due to her August 15, 1990 employment injury. On August 16, 1995 appellant filed another claim for a schedule award and referenced the May 1, 1992 employment injury. By decision dated November 6, 1998, the Office denied appellant's claim for an increased schedule award for the right upper extremity.

The Federal Employees' Compensation Act² provides that if there is 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.³ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association (A.M.A.), *Guides to the Evaluation of*

¹ The August 15, 1990 employment injury was originally assigned Office file number A25-369576. The May 1, 1992 employment injury was assigned Office file number A25-425026. The case records for these two employment injuries were combined in 1996 under Office file number A25-425026.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8107(a).

Permanent Impairment as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."⁵ This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁶

In notes dated April 4, 1995, Dr. Kevin E. McGovern, appellant's attending Board-certified orthopedic surgeon, related that she was having problems with her left upper extremity, provided findings on examination, and diagnosed subacromial bursitis and rotator cuff tendinitis of the left shoulder.

In notes dated June 6, 1995, Dr. McGovern related that appellant was experiencing pain in her shoulder and he provided findings on examination which included weakness and pain on motion of the shoulder.⁷ He indicated that appellant had sustained a total impairment of the shoulder of 31 percent based upon 10 percent impairment due to complaints of pain, weakness, loss of function and loss of endurance and an 11 percent permanent impairment based upon loss of range of motion. In a work restriction evaluation form dated June 6, 1995, Dr. McGovern stated that appellant had a 31 percent permanent impairment and indicated that she could not write continuously with her right hand.

In a form report and notes dated July 25, 1995, Dr. McGovern related appellant's complaints of left shoulder and neck pain, diagnosed subacromial bursitis and rotator cuff tenderness of the left shoulder and indicated that appellant had a 31 percent permanent impairment of the left upper extremity.

In notes dated September 12, 1995, Dr. McGovern related that appellant continued to have pain in her left shoulder and he diagnosed cervical strain and subacromial bursitis and rotator cuff tendinitis of the left shoulder.

⁴ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); see *John H. Smith*, 41 ECAB 444, 448 (1990).

⁶ *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

⁷ He did not indicate which shoulder was impaired.

In a narrative report dated September 15, 1995,⁸ Dr. McGovern opined that appellant had a 31 percent permanent impairment of the left upper extremity according to the fourth edition of the A.M.A., *Guides* based on his findings which included a left shoulder range of motion of 130 degrees of abduction, 140 degrees of flexion, 20 degrees of extension, 40 degrees of external rotation and 40 degrees of internal rotation. He stated that appellant had an 11 percent permanent impairment for loss of motion of the left shoulder and a 20 percent permanent impairment for pain as described in an enclosed Form CA-1303-05 (impairment rating form).

In notes dated December 26, 1995, Dr. McGovern related that appellant was having pain in her shoulders. He provided findings on examination and diagnosed cervical and dorsal strains, a sprain of her shoulders and carpal tunnel syndrome. In notes dated February 20, 1996, Dr. McGovern provided findings on examination and diagnosed chronic cervical strain and sprain of her shoulders.

In a report dated April 17, 1996, Dr. Donald G. Slaughter, a Board-certified neurosurgeon and an Office referral physician, provided findings on examination and opined that appellant had no permanent impairment of her left upper extremity but had a 30 percent impairment of her right upper extremity based upon a 10 percent range of motion impairment and a 20 percent impairment based on pain, loss of function and endurance. He stated that she had limitation of range of motion of the right upper extremity with 130 degrees of abduction, forward elevation of 135 degrees, internal rotation of 40 degrees, external rotation of 40 degrees and extension of 20 degrees. Dr. Slaughter noted that appellant had limited range of motion in rotation, abduction and extension of both shoulders. He also indicated that appellant had reduced grip strength in the right hand associated with a dulling of pain appreciation across all fingers and the palm. However, although Dr. Slaughter opined that appellant had no permanent impairment of the left extremity and he provided no range of motion findings on examination for the left shoulder, he noted that there was limited range of motion in both shoulders. Additionally, the A.M.A., *Guides* does not provide for an impairment determination based on "pain, loss of function and endurance." Thus Dr. Slaughter's report does not correctly apply the procedures in the A.M.A., *Guides* and cannot be used to make a determination of appellant's permanent impairment. By letter dated June 27, 1996, the Office asked Dr. Slaughter to provide a more detailed explanation as to how he determined the percentage of appellant's permanent impairment with reference to specific tables and pages of the A.M.A., *Guides* but there is no response of record from him.

By memorandum dated June 12, 1996, an Office medical adviser indicated that he agreed with Dr. Slaughter as to the 10 percent impairment of the right upper extremity for loss of range of motion but no additional impairment of the right upper extremity and no impairment for the left upper extremity. However, as noted above, Dr. Slaughter's opinion is not correctly based upon the A.M.A., *Guides* and cannot be used by the Office to determine whether appellant is entitled to an additional schedule award for the right upper extremity.

In a report dated April 23, 1998, Dr. McGovern indicated, regarding appellant's right upper extremity, that appellant had a slight weakness in all planes of motion, pain on motion of

⁸ Dr. McGovern referenced the Office file number for appellant's May 1, 1992 employment injury.

her shoulder, 130 degrees of abduction, 140 degrees of forward flexion, 20 degrees of extension, 40 degrees of external rotation, 40 degrees of internal rotation and subacromial tenderness but no acromioclavicular or sternoclavicular tenderness. He also stated that there was pain on motion and tenderness in the subacromial space of the left shoulder. In a report dated April 24, 1998, Dr. McGovern stated that he included in his impairment rating for appellant the factors of pain, weakness, loss of function and loss of endurance and atrophy as required in Maryland workers' compensation law, in addition to range of motion impairment according to the A.M.A., *Guides*. In a memorandum dated October 13, 1998, an Office medical adviser stated, "Dr. McGovern is attempting to incorporate the Maryland State factors of pain, weakness atrophy, loss of function and loss of endurance. This is not in accordance with [the] fourth edition [of the A.M.A., *Guides*] and not acceptable as a basis for rating permanent impairment." As Dr. McGovern's impairment rating is not correctly based on the A.M.A., *Guides*, it cannot be used to determine whether appellant is entitled to an additional schedule award for the right upper extremity.

As there is no medical evidence of record in this case based upon correct application of the A.M.A., *Guides*, the Board, therefore, finds that this case must be remanded to the Office for further development, a medical opinion that is consistent with the A.M.A., *Guides* and an appropriate decision.

The Board notes that its jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued by the Office.⁹ In this case, in its November 6, 1998 decision, the Office found that appellant was not entitled to an additional schedule award for the right upper extremity. However, although the Office developed the medical evidence based on both the right and left upper extremities, it did not specifically address, in its November 6, 1998 decision, the issue as to whether appellant had any permanent impairment of the left upper extremity. As there is no final decision regarding the issue as to whether appellant had any permanent impairment of the left upper extremity, which would entitle her to receive a schedule award, the Board has no jurisdiction to consider this issue on appeal.

⁹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

The decision of the Office of Workers' Compensation Programs dated November 6, 1998 is set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
December 20, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member