U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE PRESTON and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 00-926; Submitted on the Record;
Issued April 19, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 27 percent permanent impairment of the left shoulder, for which he has received a schedule award.

The Office of Workers' Compensation Programs accepted that on March 1, 1996 appellant, then a 49-year-old tractor-trailer operator, stepped off his truck and fell, sustaining contusions of the left shoulder, elbow and knee and a left rotator cuff injury. The Office also accepted that appellant required surgical arthroscopy of his left shoulder, distal clavicle excision and open rotator cuff repair on May 20, 1996. He returned to limited-duty work in March 1996.

Following surgery and several periods of disability,[1] appellant returned to limited duty on September 28, 1997.

On May 12, 1998 appellant, filed a claim for a schedule award for permanent impairment of his left upper extremity and submitted a report dated March 12, 1998 from Dr. David Weiss, an osteopath. He provided an assessment of appellant's condition and his limitations with stated reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth edition 1993).[2] Dr. Weiss reported that in April 1997, appellant had undergone acromioplasty/distal clavicle excision and therefore had acromio clavicular tenderness and range of motion restrictions.

Dr. Weiss noted that range of motion revealed forward elevation of 120/180 degrees, abduction of 140/180 degrees, crossover adduction of 50/75 degrees and external rotation of

[1] Appellant filed two additional claims for recurrence of disability on November 29, 1996 and April 23, 1997, indicating that his original injury caused him additional disability on December 3, 1996. On April 29, 1997 appellant underwent an open calcification excision to remove calcium deposits associated with the original injury.

[2] A.M.A., *Guides*.

45/90 degrees with pain. Posterior reach (internal rotation) was abnormal to the sacrum. Muscle strength testing revealed a grade of 4/5 involving both the supraspinatus and deltoid muscles. After describing his findings on examination of appellant's left shoulder, he concluded:

> "For the range of motion deficit left shoulder flexion, four percent ([F]igure 38, page 43). For the range of motion deficit left shoulder abduction, two percent ([F]igure 41, page 44). For the range of motion deficit left shoulder extension rotation, one percent ([F]igure 44, page 45). For the 4/5 motor strength weakness left supraspinatus, four percent ([T]able 15, page 54; [T]able 12, page 49). For the 4/5 motor strength weakness left deltoid, nine percent ([T]able 15, page 54; [T]able 12, page 49). For the left shoulder resection arthroplasty, 24 percent ([T]able 27, page 61). Combine total left upper extremity, 39 percent."

Appellant also submitted a statement dated May 1, 1998 from Dr. Gerald Williams Jr., a Board-certified orthopedic surgeon who did the May 20, 1996 operation. Dr. Williams concurred with Dr. Weiss' findings of impairment of the left upper extremity.

In a report dated June 22, 1998, an Office medical adviser determined that Dr. Weiss' findings in his March 12, 1998 report were correct, using the fourth edition of the A.M.A., *Guides*, with the exception of the calculation of impairment for the resection arthroplasty of the acromioclavicular joint. The Office medical adviser found that, according to Table 27, page 61, the percentage of impairment should have been 10 percent and noted that the 24 percent rating determined by Dr. Weiss corresponded to the glenohumeral joint of the shoulder. The Office medical adviser then combined the values of 7 percent impairment for range of motion and 13 percent impairment for weakness, along with 10 percent impairment for arthroplasty to obtain a 27 percent impairment of the left shoulder.

On July 15, 1998 the Office granted appellant a schedule award for a 27 percent permanent impairment of his left shoulder for a total of $11,496.86 from February 5, 1998 to September 17, 1999.

By letter dated July 22, 1998, appellant requested an oral hearing which was held on February 9, 1999.

By decision dated April 1, 1999, the Office hearing representative affirmed the schedule award on the grounds that the opinion of the Office medical adviser constituted the weight of the medical evidence.

In a letter dated May 27, 1999, appellant through counsel requested reconsideration and submitted correspondence from Dr. Weiss who indicated that he reviewed the operation report from Dr. Williams and found that appellant underwent arthroscopic surgery consisting of a subacromial bursectomy and acromioplasty and debridement of the soft tissue on the under surface of the acromion. He stated that an incision was also made for the remaining portion of the corico-acromial ligament; a portion of the acromial facet of the acromioclavicular joint and part of the clavicle were removed. A partial synovectomy was then performed at the glenohumeral joint and under surface tear of the supraspinatus was debrided. Dr. Weiss

concluded that the term resection arthroplasty, with a rating of 24 percent impairment according to the A.M.A., *Guides* applied in this case.

On August 30, 1999 the Office referred the case file to a second Office medical adviser. In a report dated August 31, 1999, the Office medical adviser explained that Table 27 on page 61 of the A.M.A., *Guides*, lists an impairment rating for resection arthroplasty for the entire shoulder and also a rating when only the distal clavicle (acromion) has been removed. The Office medical adviser indicated that as appellant had only a partial synovectomy of the glenohumeral joint and not resection arthroplasty for the entire shoulder, he was afforded the proper percentage of impairment of 10 percent for his arthroplasty procedure.

By decision dated September 1, 1999, an Office hearing representative denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of its previous decision.

The Board finds that appellant has no more than a 27 percent permanent impairment of his left shoulder.

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent the amount of compensation is paid in proportion to the percentage loss of use.[5] However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[6]

In this case, the Office determined that appellant had a combined permanent impairment of 27 percent of his left shoulder by adopting the findings of the Office medical adviser, who calculated appellant's impairment using Dr. Weiss' March 12, 1998 report. Specifically, the Office medical adviser determined that appellant had a 10 percent impairment based on his level of resection arthroplasty. On reconsideration, appellant's counsel argued that the Office erred because it had not considered that appellant had undergone a resection arthroplasty procedure, entitling him to a 24 percent impairment rating, and a greater overall impairment.

Reports submitted by appellant from Dr. Weiss dated March 12, 1998 and May 5, 1999 indicated that appellant had undergone an arthroplasty procedure in which only a portion of the

[3] 5 U.S.C. §§ 8101-8193.; *see* 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.404.

[5] 5 U.S.C. § 8107(c)(19).

[6] *Thomas D. Gauthier*, 34 ECAB 1060 (1983).

acromial facet of the acromioclavicular joint and clavicle were removed. According to Table 27 on page 61 of the A.M.A., *Guides*, this type of procedure, a resection arthroplasty of the distal clavicle would only entitle appellant to a 10 percent impairment rating. Appellant has not submitted any evidence, which suggests that he underwent a resection arthroplasty of the total shoulder due to his injury, which would have entitled him to the higher impairment rating. The Board therefore finds that the Office medical adviser properly calculated the resection arthroplasty impairment in accordance with the A.M.A., *Guides*. The Board also finds that the Office medical adviser properly calculated the motion and weakness impairments pursuant to the A.M.A., *Guides* and properly concluded that appellant has a 27 percent impairment of the left shoulder.

The September 1 and April 1, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member