U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SALVADOR OLLOQUI and DEPARTMENT OF THE TREASURY, IMMIGRATION & NATURALIZATION SERVICE, El Centro, CA

Docket No. 03-363; Submitted on the Record;
Issued April 23, 2003

DECISION and ORDER

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

The issue is whether appellant has more than a six percent permanent impairment of his right upper extremity, for which he received a schedule award.[1]

The Office of Workers' Compensation Programs accepted that on June 8, 2000 appellant, then a 23-year-old border patrol trainee, sustained a labral tear of the right shoulder during physical training, for which he underwent arthroscopic surgery on October 25, 2000 and on May 9, 2001. Appellant received appropriate compensation benefits and was eventually able to return to sedentary light-duty work.

Appellant's treating physician, Dr. Steven Tradonsky, a Board-certified orthopedic surgeon, provide regular reports in 2001 indicating that appellant had right shoulder pain and decreased range of shoulder motion and noting that his condition was not yet permanent or stationary.

A July 12, 2001 second opinion examination by Dr. Richard D. Perlman, a Board-certified orthopedic surgeon, noted that appellant still had right shoulder pain and a painful "popping" with movement and demonstrated reduced right shoulder range of motion. Dr. Perlman opined that appellant remained totally disabled, was not permanent or stationary, and was not capable of performing his usual and customary work.

In an August 13, 2001 decision, Dr. Peter B. Wile, a Board-certified orthopedic surgeon, provided another second opinion examination, noted appellant's complaints of throbbing right shoulder pain, popping and crepitus and loss in range of motion of 10 degrees of forward flexion, and noted that impingement signs were mildly positive. Dr. Wile diagnosed status post arthroscopic Mumford excision of the right shoulder times two, status post labral repair of the

[1] Appellant appealed only this decision and did not appeal the overpayment decision or the loss of wage-earning capacity determination, which were rendered on August 8 and September 18, 2002 respectively.

right shoulder and right shoulder internal derangement with possible failure of biologic labral fixation tacks. He reiterated these findings in a report dated August 17, 2001.

On August 23, 2001 Dr. Tradonsky noted that appellant continued to experience right shoulder pain and weakness of the shoulder, forward flexion to 175 degrees, abduction of 90 degrees, ERH of 80 degrees, ERS of 50 degrees and IRS to T6. He opined that appellant should have a weight lifting restriction of no more than five pounds on the right and was qualified for vocational rehabilitation.

On March 14, 2002 the Office issued appellant a notice of preliminary determination that he had received an overpayment of compensation in the amount of $1,486.99 because deductions for health insurance were not made for the period July 1, 2000 through November 3, 2001. The Office found appellant not at fault in the creation of the overpayment and indicated that, if he desired waiver, he could pursue the avenues provided in the letter. Appellant requested waiver of recovery of the overpayment.

On May 21, 2002 the Office preliminarily determined that appellant had been reemployed as a program director at a Boys and Girls Club, and it reduced his monetary compensation benefits based on his actual earnings. The Office provided calculations of appellant's wage-earning capacity in that job.

On June 5, 2002 an Office medical adviser, Dr. Arthur S. Harris, reviewed the medical evidence of record and applied the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to determined that appellant had flexion to 175 degrees, extension to 40 degrees, abduction to 170 degrees, adduction to 40 degrees, internal; rotation to 70 degrees and external rotation to 80 degrees. Dr. Harris determined that the date of maximum medical improvement was August 23, 2001 and that no rotator cuff weakness was noted. For schedule award purposes Dr. Harris found that appellant had 1 percent impairment for loss of shoulder flexion (Figure 16-40/page 476), 1 percent impairment for loss of shoulder extension (Figure 16-40/page 476), 1 percent impairment for loss of shoulder internal rotation (Figure 16-46/page 479) which resulted in a 3 percent impairment for loss of right shoulder motion. He further noted that appellant had a Grade 3 pain/decreased sensation that interfered with some activity [60 percent] (Table 16-10/page 482) of the axillary nerve/deltoid muscle [5 percent] (Table 16-15/page 492) which resulted in a 3 percent right upper extremity impairment for pain that interferes with activity. Using the Combined Values Chart Dr. Harris calculated that appellant had a 6 percent total impairment of the right upper extremity.

On August 8, 2002 the Office finalized the overpayment preliminary determination in the amount of $1,486.99 and indicated that it would be recovered by withholding compensation from his continuing benefits.

On August 14, 2002 the Office granted appellant a schedule award for a six percent permanent impairment of his right upper extremity for the period August 11 to December 20, 2002 for a total of 18.72 weeks of compensation.

By decision dated September 18, 2002, the Office finalized the reduction of appellant's compensation to reflect his wage-earning capacity.

The Board finds that appellant has no greater than a six percent permanent impairment of his right upper extremity, for which he has received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent from loss, or loss of use, of scheduled members of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[4] 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* (fifth edition) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[6] However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment. Such factors were considered in this case.

In this case, appellant's physician, Dr. Tradonsky, found that appellant continued to experience right shoulder pain and weakness of the shoulder, forward flexion to 175 degrees, abduction of 90 degrees, ERH of 80 degrees, ERS of 50 degrees and IRS to T6. He did not, however, provide as estimated impairment rating in accordance with the A.M.A., *Guides*.

The Office medical adviser, Dr. Harris, however, correctly applied the A.M.A., *Guides* and determined that appellant had a 1 percent impairment for loss of shoulder flexion (Figure 16-40/page 476), a 1 percent impairment for loss of shoulder extension (Figure 16-40/page 476) and a 1 percent impairment for loss of shoulder internal rotation (Figure 16-46/page 479) which resulted in a 3 percent impairment for loss of right shoulder motion. He further noted that appellant had a Grade 3 pain/decreased sensation that interfered with some activity [60 percent] (Table 16-10/page 482) of the axillary nerve/deltoid muscle [5 percent] (Table 16-15/page 492) which resulted in a 3 percent right upper extremity impairment for pain that interferes with activity. Using the Combined Values Chart, Dr. Harris calculated that appellant had a 6 percent

[2] 5 U.S.C § 8101 *et seq.*; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.304.

[4] 5 U.S.C. § 8107(c)(19).

[5] 20 C.F.R. § 10.404 (1999). FECA Transmittal No. 02-12 (issued August 30, 2002) explains that all permanent impairment awards determined on or after February 1, 2001, the effective dated of the A.M.A., *Guides* application, regardless of the date of the medical examination, should be based on the fifth edition of the A.M.A., *Guides*.

[6] *See William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

total impairment of the right upper extremity. Therefore, Dr. Harris' report is entitled to great weight.

As there is no other medical report of record which provides a right upper extremity permanent impairment rating for appellant in accordance with the A.M.A., *Guides*, Dr. Harris' report constitutes the weight of the medical evidence of record on this issue.

On appeal appellant argues that he should receive a greater schedule award due to his right upper extremity pain; however, the Board notes that Dr. Harris did provide an impairment rating for appellant's unresolved pain, which was described very well by Dr. Tradonsky.

As appellant has not submitted any further medical evidence to establish that he has any greater impairment rating, the Office's finding must be affirmed.

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 14, 2002 is hereby affirmed.

Dated, Washington, DC
April 23, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member