U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM F. SIMPSON and U.S. POSTAL SERVICE,
WRIGHTSTOWN POST OFFICE, Wrightstown, NJ

Docket No. 02-1430; Submitted on the Record;
Issued January 16, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 21 percent permanent impairment of the right arm.

On August 5, 1999 appellant, then a 52-year-old rural letter carrier, filed a claim for pain in his right arm, which he related to repetitive motion in sorting and delivering mail. On October 12, 1999 he underwent surgery for a massive rotator cuff tear of the right shoulder. Dr. Frederick Balduini reported that he performed an arthrotomy of the shoulder with acromioplasty and advancement of the infraspinatus tendon of the right shoulder. The Office of Workers' Compensation Programs accepted appellant's claim for a rotator cuff tear. Appellant used sick and annual leave from October 14, 1999 to January 21, 2000. The Office paid temporary total disability for the period January 22 through February 27, 2000. Appellant returned to limited duty on February 28, 2000.

In an April 18, 2001 report, Dr. David Weiss, an osteopath, indicated that appellant complained of intermittent pain and stiffness in the right shoulder, with weakness involving the shoulder. He reported that appellant's forward elevation was 90 degrees, abduction was 75 degrees and adduction was 75 degrees. Dr. Weiss stated that appellant's internal rotation was abnormal to the greater trochanter. Dr. Weiss noted that appellant had muscle wasting in the shoulder due to amyotrophic lateral sclerosis. He diagnosed status post massive rotator cuff tear to the right shoulder, post-traumatic impingement syndrome to the right shoulder, status post arthrotomy to the right shoulder and status post advancement of the infraspinatus tendon of the right shoulder secondary to the rotator cuff tear. Dr. Weiss calculated that appellant had a six percent permanent impairment of the arm due to loss of flexion and a five percent permanent impairment due to loss of abduction. He stated that appellant had a 24 percent permanent impairment of the right arm due to right shoulder resection arthroplasty. Dr. Weiss concluded that appellant had a 33 percent permanent impairment of the arm.

In a June 15, 2001 memorandum, an Office medical adviser stated that appellant had a 6 percent permanent impairment due to loss of flexion, a 5 percent permanent impairment due to loss of abduction and a 1 percent permanent impairment due to an estimated 20 degrees loss of internal rotation. He stated that Dr. Weiss' 24 percent permanent impairment for arthroplasty was for a total shoulder replacement. The Office medical adviser noted that appellant only had a partial acromioplasty. He estimated that appellant had a 10 percent permanent impairment due to the shoulder surgery. The Office medical adviser concluded that appellant had a 21 percent permanent impairment of the right arm.

In a June 28, 2001 report, the Office issued a schedule award for a 21 percent permanent impairment of the right arm.

Appellant requested a hearing before an Office hearing representative. In support of the request, his attorney submitted a November 5, 2001 report, from Dr. Weiss, who stated that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[1] a 10 percent permanent impairment rating is given for an isolated resection of the distal clavicle. He commented that appellant did not have a resection of the distal clavicle, but a resection of the acromion which is part of the scapula, as well as an arthrotomy and advancement of the infraspinatus tendon. Dr. Weiss concluded, therefore, that appellant had more than a 10 percent permanent impairment of the arm due to the surgery. He stated that, since the A.M.A., *Guides* allow a 10 percent permanent impairment for an isolated distal clavicle resection and a 30 percent permanent impairment for resection arthroplasty of the total shoulder, appellant would warrant an impairment rating of approximately 20 percent. Dr. Weiss combined the 20 percent with the permanent impairment ratings for loss of motion and concluded that appellant had a 30 percent permanent impairment of the right arm.

The hearing was conducted on November 14, 2001. The Office hearing representative referred the case record to a second Office medical adviser for review. In a January 11, 2002 memorandum, the second Office medical adviser stated that appellant underwent repair of the right rotator cuff with an acromioplasty in conjunction with the repair. He commented that an acromioplasty was frequently done in association with rotator cuff repairs to allow adequate motion of the repaired rotator cuff. The second medical adviser stated that the table used in appellant's case did not deal with the surgical condition noted in appellant and should not be used in his case. He commented that the shoulder range of motion measurements would adequately provide an estimate of appellant's permanent impairment, which was 12 percent. In a February 1, 2002 decision, the Office hearing representative affirmed the Office's June 28, 2001 decision.

The Board finds that the case is not in posture for a decision due to a conflict in the medical evidence.

[1] (5th ed. 2001).

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 impairment from loss or loss of use, of scheduled members or functions of 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.

Dr. Weiss and both Office medical advisers properly used the A.M.A., *Guides* to determine that appellant had a 6 percent permanent impairment of the arm for 90 degrees of flexion, a 5 percent permanent impairment for 75 degrees of abduction and a 1 percent permanent impairment for loss of internal rotation. They, therefore, concurred that appellant had a 12 percent permanent impairment due to loss of motion in the right shoulder. However, Dr. Weiss and the Office medical advisers disagreed on the extent of appellant's permanent impairment that should be attributed to his shoulder surgery. He initially indicated that appellant had a 24 percent permanent impairment due to the surgery. The first Office medical adviser pointed out that the 24 percent figure was for a total shoulder replacement. He stated that appellant was entitled to a 10 percent permanent impairment for an isolated resection of the distal clavicle. In turn, Dr. Weiss pointed out that appellant's surgery was a resection of the acromion, not the clavicle and involved relocating a tendon in the shoulder. He estimated that appellant was entitled to a 20 percent permanent impairment rating for the effects of his surgery. The second Office medical adviser concluded that the surgery table did not apply to appellant's case at all and concluded that he had only a 12 percent permanent impairment. There exists, therefore, a conflict on the medical evidence between Dr. Weiss and the Office medical advisers on the extent of permanent impairment that should be attributed to appellant's surgery.

In view of the conflict in the medical evidence, the case must be remanded to the Office for referral of appellant's case to an appropriate impartial medical specialist. As Dr. Weiss indicated that the 10 percent permanent impairment rating given by the Office medical adviser did not apply to the surgery that appellant underwent, impartial specialist should review appellant's case and indicate whether the 10 percent permanent impairment rating given for appellant's shoulder surgery was appropriate or should be increased or eliminated.[4] After further development as it may find necessary, the Office should issue a *de novo* decision.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] The Board notes that, as appellant has amyotrophic lateral sclerosis, commonly known as Lou Gehrig's disease, a current evaluation of his permanent impairment of the right arm probably would not provide an accurate assessment of the permanent impairment of appellant's arm due to the employment injury and any preexisting conditions. Therefore, the determination of the extent of his permanent impairment must be made from the medical evidence already of record.

The decisions of the Office of Workers' Compensation Programs dated February 1, 2002 and June 28, 2001 are hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
January 16, 2003

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member