

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE BATTLE and U.S. POSTAL SERVICE,
POST OFFICE, Somerset, NJ

*Docket No. 99-1744; Submitted on the Record;
Issued August 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 15 percent permanent impairment of the right upper extremity.

On September 16, 1992 appellant, then a 48-year-old clerk, injured her right shoulder when she slipped and fell in the parking lot of the employing establishment. The Office of Workers' Compensation Programs accepted the claim for a rotator cuff tear of the right shoulder and authorized acromioplasty surgery to repair the injury.¹

On September 10, 1997 appellant filed a claim for a schedule award. She submitted a July 2, 1996 medical report from Dr. David Weiss, an osteopath, who evaluated appellant for permanent impairment arising from her accepted employment injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (Fourth ed. 1993) (A.M.A., *Guides*). He determined appellant sustained a 34 percent impairment: 5 percent rating for loss of range of motion for right shoulder and 30 percent rating for grip strength loss right upper extremity, for a total combined impairment of right upper extremity of 34 percent.²

Dr. Weiss' report and the case record were referred to the Office medical adviser who determined that appellant sustained a 15 percent impairment of the right upper extremity.

In a decision dated January 27, 1998, the Office granted appellant a schedule award for a 15 percent permanent loss of the right upper extremity.

¹ Appellant filed a notice of recurrence of disability on August 27, 1993. This aspect of the claim is not before the Board.

² The doctor obtained his rating from Figure 38, page 43; and Table 32, page 65 of the A.M.A., *Guides*.

Appellant, through her attorney, requested a hearing before an Office hearing representative which was held October 28, 1998.³

In a January 11, 1999 decision, finalized on January 12, 1999, the hearing representative affirmed the decision of the Office dated January 27, 1998. The hearing representative determined that the medical adviser applied the proper edition of the A.M.A., *Guides* to the information provided in Dr. Weiss' report and reached the appropriate impairment rating of 15 percent.

The Board finds that appellant has no more than a 15 percent impairment of the right upper extremity.

Section 8107 of the Federal Employees' Compensation Act specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.⁴ For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, as the standard for determining the percentage of permanent impairment and the Board has concurred in such adoption.⁵

On appeal appellant alleges that there was a conflict in medical evidence between the appellant's physician Dr. Weiss and the Office medical adviser and therefore the case should be referred to an impartial physician for final determination. Appellant also alleged that the medical adviser, in determining grip strength loss, should not have compared appellant's right arm to her left arm as her left arm is also injured.

In a report dated July 2, 1996, Dr. Weiss found that appellant sustained a 34 percent impairment which comprised a 5 percent rating for loss of range of motion for the right shoulder and a 30 percent rating for grip strength loss for the right upper extremity for a total impairment of the right upper extremity of 34 percent. He determined the five percent rating loss from page 43 of the A.M.A., *Guides*. Dr. Weiss determined the 30 percent rating for grip strength loss after testing appellant's grip strength using the Jamar Hand Dynamometer. The test revealed 2 kg. of force strength in the right hand versus 2.5 kg. of force strength in the left hand. However, he did not report the percentage of strength loss index.⁶ Dr. Weiss also improperly based his rating of loss of grip strength on that of the normal female in appellant's age group. However, the A.M.A., *Guides* provide that the rating of loss of grip strength is compared to those of the

³ At the hearing, appellant's attorney submitted a September 25, 1998 letter from a physician's office noting that appellant was scheduled for surgery on October 28, 1998. The nature of the surgery is not identified.

⁴ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁵ *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961); *Francis John Kilcoyne*, 38 ECAB 168 (1987).

⁶ Impairments of the upper extremity due to loss of strength are based on the Strength Loss Index Ranges, Table 34 of the A.M.A., *Guides*.

opposite extremity, which is usually normal.⁷ While appellant contends that her left shoulder was not normal such that Table 32 should have been used, there is no medical evidence documenting this nor did Dr. Weiss, in his report, make any reference to any left shoulder deficiencies.⁸

The medical adviser utilized the findings in Dr. Weiss' report to determine appellant's loss of range of motion for the right shoulder. The medical adviser noted Dr. Weiss' report indicated 150 degrees at flexion which is a 2 percent impairment;⁹ 110 degrees at abduction which is a 3 percent impairment.¹⁰ The figures Dr. Weiss provided for adduction and external rotation were not ratable¹¹ thereby appellant's impairment for loss of range of motion of the right shoulder totaled five percent. The strength loss index formula, as applied by the medical adviser, is normal strength minus abnormal strength divided by normal strength. The percentage of strength loss index was 20 percent; and according to Table 34, page 65 of the A.M.A., *Guides*, indicated a percentage of upper extremity impairment of 10 percent. Dr. Weiss used the A.M.A., *Guides* to determine that appellant had a 30 percent loss of grip strength and Table 34, page 65, assigns this percent of strength loss index at 10 percent impairment of the upper extremity. The 10 percent impairment for the grip strength loss combined with the 5 percent impairment for loss of range of motion of right shoulder yields a 15 percent impairment.

The Board finds that a medical conflict does not exist as Dr. Weiss did not properly follow the procedures as set forth on page 64 of the A.M.A., *Guides*.¹² The medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Weiss' report and reached an impairment rating of 15 percent. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 15 percent permanent impairment of the right upper extremity.

⁷ See page 64 of the A.M.A., *Guides*.

⁸ The A.M.A., *Guides* (4th ed. 1994) emphasize that because strength measurements are functional tests influenced by subjective factors that are difficult to control, and the A.M.A., *Guides* are mostly based on anatomic impairment, the A.M.A., *Guides* do not assign a large role to such measurements. However, the A.M.A., *Guides* state that in a rare case, if the examiner believes the patient's loss of strength represents an impairing factor that has not been considered adequately, the loss of strength may be rated separately. They state that the loss of strength impairment would be combined with the other upper extremity impairments using the Combined Values Chart on page 22.

⁹ See page 43, Figure 38 of the A.M.A., *Guides*.

¹⁰ See page 44, Figure 41 of the A.M.A., *Guides*.

¹¹ See page 44, Figure 41 and page 45, Figure 44 of the A.M.A., *Guides*.

¹² See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

The decision of the Office of Workers' Compensation Programs dated January 11, 1999 and finalized on January 12, 1999 is hereby affirmed.

Dated, Washington, D.C.
August 24, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member