U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUANITA RAMIREZ and U.S. POSTAL SERVICE,
SOUTH SUBURBAN POST OFFICE, St. Bedford Park, IL

Docket No. 99-609; Submitted on the Record;
Issued July 5, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than an eight percent impairment of her right upper extremity for which she received a schedule award.

On June 17, 1994 appellant, then a 28-year-old letter sorting machine operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained rotator cuff tendinitis causally related to factors of her federal employment.[1] The Office of Workers' Compensation Programs accepted appellant's claim for bilateral rotator cuff tendinitis and resulting surgery. Appellant underwent a right shoulder arthroscopy with subacromial decompression and debridement of partial thickness rotator cuff tear on May 15, 1995 by Dr. Jeffrey L. Visotsky, a Board-certified orthopedic surgeon.

By letter dated November 28, 1995, the Office referred appellant to Dr. Glenn A. Reinhart, an orthopedic surgeon, for a second opinion. In a medical report dated December 8, 1995, Dr. Reinhart noted that appellant continued to have mild signs of rotator cuff irritation and mild deficits in scapulothoracic mechanics. He opined that appellant would benefit from a brief period of supervised therapy.

In a medical report dated October 26, 1995, Dr. Visotsky released appellant to return to limited-duty work. In a medical report dated April 8, 1996, Dr. Visotsky noted that he was making her current work restrictions permanent, *i.e.*, "no overhead activities, no lifting greater than two pounds forward plane only."

[1] Appellant also alleged that she had tendinitis in both her wrists.

By letter dated July 29, 1996, the Office requested another opinion from Dr. Reinhart. In a medical report dated August 22, 1996, Dr. Reinhart stated as follows:

> "On examination of her right shoulder the primary finding is that of tenderness in the parascapular muscles along the medial border of the right scapula. She has improved her scapulothoracic mechanics since her last visit. She has full range of motion at her shoulder with good power and no impingement at this time. There is no scapular winging; her shoulder is stable.
>
> "Based on my current findings I feel that [appellant] is capable of returning to work on a modified basis. She should continue to have permanent restrictions of lifting no more than 20 pounds, she should not perform repetitive movements above shoulder height. I think that she is at risk for recurrent shoulder problems with extensive overhead or reaching-type activities. I think that she will be able to continue with full activity as long as work is placed in the forward plane and is close to her body."

By letter dated January 21, 1997, the Office requested that Dr. Visotsky determine the extent of permanent partial impairment of appellant's bilateral rotator cuff tendon due to the work-related injury. In an unsigned medical report dated March 25, 1997, Dr. Visotksy determined that appellant had an eight percent total right extremity impairment. Dr. Visotsky also took specific measurements for range of motion in appellant's right shoulder as follows: 37 degrees extension, 154 degrees flexion, 152 degrees abduction and 70 degrees external rotation.

The Office medical adviser, after reviewing the reports of Drs. Visotsky and Reinhart and applying these reports to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[2] concurred that appellant had an eight percent impairment of her right upper extremity. Initially, he noted:

> "Dr. Visotsky's report from March 25, 1997, as well as the [report] from Dr. Reinhart from August 22, 1996 describe the patient having intermittent pain in the right shoulder exacerbated with overhead lifting, and inhibiting her from sleeping on the right shoulder. Combining Tables 15 (p. 3/54) and 11 (p. 3/48) of the A.M.A., *Guides to the Evaluation of Impairment*, 4th ed., gives 3 percent PPI [permanent partial impairment] on the right upper extremity due to Grade 3 pain in the suprascapular nerve distribution. There is no mention of weakness in the musculature of the shoulder girdle from either Dr. Reinhart's note or the exam[ination] performed on March 25, 1997…."

Utilizing Dr. Visotsky's figures from his March 25, 1997 report, the Office medical adviser noted that appellant had the following percentages of impairment in the right upper

[2] A.M.A., *Guides* (4th ed. 1993).

extremity: abduction one percent,[3] internal rotation two percent, external rotation zero percent,[4] flexion one percent and extension one percent,[5] for a total of five percent. Using the Combined Values Chart found on page 322 of the A.M.A., *Guides*, the Office medical adviser determined that appellant had a permanent impairment of eight percent.[6]

By decision dated December 2, 1997, the Office granted appellant a schedule award based on eight percent impairment to her right upper extremity for the period February 15 to August 7, 1996.

The Board finds that appellant has no greater than an eight percent impairment of the right upper extremity, for which she received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act,[7] and section 10.304 of the implementing regulations,[8] schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[9]

In the instant case, both Dr. Visotsky and the Office medical adviser agreed that appellant had an eight percent impairment of the right upper extremity. The Office medical adviser supported his opinion by specific references to the A.M.A., *Guides*, and the A.M.A., *Guides* support his opinion. There is no other medical evidence of record establishing a higher degree of impairment. Accordingly, the Board finds that, under the fourth edition of the A.M.A., *Guides*, appellant has not established a greater impairment to the right upper extremity than the eight percent permanent impairment which she had been awarded.

[3] A.M.A., *Guides*, 3/44, Figure 41.

[4] A.M.A., *Guides*, 3/45, Figure 44.

[5] A.M.A., *Guides*, 3/43, Figure 38.

[6] The Office medical adviser noted that, in Dr. Visotsky's examination of March 25, 1997, he noted some limited range of motion, sensory changes and decreased strength in appellant's hands, wrists and elbow, but that only rotator cuff tendinitis had been accepted, and therefore these other numbers were not included in the permanent partial impairment rating. He further noted that appellant had only shown a presumptive diagnosis of left rotator cuff tendinitis, and that this was not sufficient to assign a permanency rating at this time.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.304.

[9] *Richard A. Kastan*, 47 ECAB 651, 652 (1997).

The decision of the Office of Workers' Compensation Programs dated December 2, 1997 is affirmed.[10]

Dated, Washington, D.C.
July 5, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] After the issuance of the December 2, 1997 decision, appellant submitted additional evidence in support of her claim. The Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider this evidence for the first time on appeal. 20 C.F.R. § 501.2(c).