

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD R. HARTMAN and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, NC

*Docket No. 03-188; Submitted on the Record;
Issued May 7, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 12 percent permanent impairment of the left shoulder.

On August 29, 1996 appellant, then a 45-year-old custodian, sustained an injury to his left shoulder when he was throwing trash bags into a compactor. The Office of Workers' Compensation Programs accepted appellant's condition for a left shoulder strain and authorized three surgical procedures. Dr. Patrick M. Connor, a Board-certified orthopedic surgeon, preformed arthroscopic surgery on August 20, 1997, December 23, 1998 and December 14, 1999.

On November 17, 2000 appellant filed a claim for a schedule award. She submitted a May 30, 2000 note from Dr. Connor, who reported that appellant continued to have subjective pain although there were no objective findings. Dr. Connor indicated: appellant had full elevation; external rotation was 50 degrees; internal rotation still had a few levels of decreased motion; there was no evidence of anterosuperior instability; and he had a strong deltoid. He noted that appellant had reached maximum medical improvement indicating that he had nothing further to offer him at this point. Dr. Connor noted a permanent impairment rating of 22 percent in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) (A.M.A., *Guides*).¹

The Office referred Dr. Connor's report and the case record to its medical adviser who, in a report dated August 24, 2001, determined in accordance with the A.M.A., *Guides* that appellant sustained a 12 percent permanent impairment of the left shoulder.

¹ In a letter dated November 29, 2000, the Office requested that Dr. Connor explain his May 30, 2000 impairment rating of 22 percent of the left shoulder. The Office specifically requested that Dr. Connor provide his calculation using the tables and charts in the A.M.A., *Guides*. In a note date-stamped December 1, 2000, Dr. Connor indicated that appellant had reached maximum medical improvement and referred the Office to his dictation of May 30, 2000 for any further explanation of the permanent partial impairment rating granted.

In a decision dated October 10, 2001, the Office granted appellant a schedule award for 12 percent permanent impairment of the left shoulder.

In a letter dated April 24, 2002, appellant requested reconsideration of the Office decision and submitted additional evidence, including a report from Dr. Connor dated March 25, 2002, which explained that the difference in impairment ratings between his calculations and that of the Office medical adviser was due to his allocation of impairment for excising a large meso os-acromiale. He noted that this was an unusual clinical course, and had not been addressed in either the fourth or the fifth edition of the A.M.A., *Guides*. Dr. Connor indicated that excising a large portion of the acromion provided weakness of the anterior deltoid and the medial deltoid; continued pain, disability, mechanical disadvantages; and potential future shoulder problems. Dr. Connor noted that, based on his understanding of the pathology presented, the surgeries performed and the liberty allowed by the A.M.A., *Guides*, appellant sustained a 22 percent permanent impairment of the left shoulder.

Dr. Connor's report and the case record were referred to the Office's medical adviser who in a report dated June 24, 2002 determined in accordance with the A.M.A., *Guides* that appellant sustained a 12 percent impairment of the left shoulder. The medical adviser indicated that Dr. Connor alleged an impairment due to excision of a large meso os-acromiale, which caused weakness of the deltoid muscle. However, the medical adviser indicated that appellant was provided with a 10 percent permanent impairment for deltoid weakness in the medical adviser's report of August 24, 2001. The medical adviser further stated that, while Dr. Connor noted alleged pain, disability, mechanical disadvantages, and potential for future problems, none of these factors were definable in terms of permanent partial impairment in the A.M.A., *Guides*.

In a decision dated August 16, 2002, the Office affirmed the decision dated October 10, 2001 on the grounds that the new evidence submitted was insufficient to warrant modification of the prior decision.

The Board finds that appellant has no more than a 12 percent impairment of the left shoulder.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ 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.

The Board has carefully reviewed Dr. Connor's reports dated May 30, 2000 and March 25, 2002 which determined appellant's left shoulder impairment and notes that

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

Dr. Connor did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.⁴ In a report dated May 30, 2000, Dr. Connor provided the following findings: full elevation; external rotation was 50 degrees; internal rotation with a few levels of decreased motion; there was no evidence of anterosuperior instability; there was a strong deltoid; with weakness and or atrophy regarding the axillary nerve. However, Dr. Connor did not provide a numerical impairment rating in conformance with the A.M.A., *Guides*. He noted that appellant sustained a 22 percent permanent impairment of the left shoulder but failed to provide his calculations in support of this determination. Additionally, Dr. Connor did not cite to tables or charts for an impairment rating determination. His March 25, 2002 report noted that the difference in impairment rating between his calculations and that of the Office was due to the impairment associated with excising a large meso os-acromiale. Dr. Connor noted that this was an unusual clinical course where it had not been addressed in either the fourth or the fifth edition of the A.M.A., *Guides*. He noted that excising a large portion of the acromion provided weakness of the anterior deltoid and the medial deltoid, and continued pain, disability, mechanical disadvantages and potential future shoulder problems. However, Dr. Connor's allocation for impairment for these factors was not addressed in the A.M.A., *Guides* and does not correlate with the tables or charts in the fourth or fifth edition of the A.M.A., *Guides*. Moreover, there is no support in the A.M.A., *Guides* which would permit an impairment rating for these factors. Dr. Connor indicated that he used the liberty as allowed by the A.M.A., *Guides* but neither cites tables or charts in support of his impairment rating determination nor does he correlate his findings to the A.M.A., *Guides*. The Board notes that the A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses and does not address the factors mentioned by Dr. Connor.⁵

The medical adviser who reviewed Dr. Connor's reports correlated findings from Dr. Connor's reports to specific provisions in the A.M.A., *Guides*. The medical adviser specifically noted the findings in Dr. Connor's May 30, 2000 and March 25, 2002 reports of: full elevation for a zero percent impairment rating;⁶ external rotation was 50 degrees for an impairment rating of one percent;⁷ internal rotation still had a few levels of decreased motion and the medical adviser estimated this figure to be 70 degrees as Dr. Connor did not provide a figure, which amounted to an impairment rating of one percent;⁸ there was no evidence of anterosuperior instability; with a strong deltoid; with weakness and or atrophy regarding the axillary nerve (weakness was graded at 4/5 for a 25 percent motor deficit multiplied by the maximum percentage of upper extremity impairment due to combined motor and sensory deficits

⁴ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

⁵ 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).

⁶ See page 44, Figure 41 (4th ed. 1993) (A.M.A., *Guides*); see also page 477, Figure 16-43 (5th ed. 2001) (A.M.A., *Guides*).

⁷ See page 45, Figure 44 (4th ed. 1993) (A.M.A., *Guides*); see also page 479, Figure 16-46 (5th ed. 2001) (A.M.A., *Guides*).

⁸ *Id.*

of 38 percent for a total of 10 percent).⁹ In this case, Dr. Connor's figures generated a 12 percent permanent impairment of the left shoulder.

Dr. Connor's March 25, 2002 report alleged an impairment due to excision of a large meso os-acromiale which caused weakness of the deltoid muscle, however, the medical adviser indicated that appellant was provided with a 10 percent permanent impairment for deltoid weakness in the medical advisers report of August 24, 2001. Dr. Connor further alleged pain, disability, mechanical disadvantages and potential for future problems, however, the medical adviser noted that none of these factors are definable and did not correlate in terms of permanent partial impairment in the A.M.A., *Guides*.

The Board notes that Dr. Connor and the Office medical adviser calculated appellant's schedule award based on the fourth edition of the A.M.A., *Guides*. The fifth edition of the A.M.A., *Guides*¹⁰ became effective February 1, 2001 and, thereafter, the Office issued its October 10, 2001 and August 16, 2002 decisions. Upon review of both the fourth and fifth editions of the A.M.A., *Guides*, the Board notes that there is no difference in the impairment rating in appellant's case.¹¹

The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Connor's May 30, 2000 and March 25, 2002 reports and reached an impairment rating of 12 percent. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 12 percent permanent impairment of the left shoulder.

The Board therefore finds that the weight of the evidence rests with the calculations of the Office medical adviser. Appellant is therefore entitled to a schedule award for no more than 12 percent impairment of the right upper extremity.

⁹ See page 49, Table 12(a)(b) and page 54, Table 15 (4th ed. 1993) (A.M.A., *Guides*); see also page 484, Table 16-11(a)(b) and page 492, Table 16-15 (5th ed. 2001) (A.M.A., *Guides*).

¹⁰ See FECA Bulletin No. 01-05 (issued January 31, 2001).

¹¹ *Supra* note 6 through 9.

The decision of the Office of Workers' Compensation Programs dated August 16, 2002 is hereby affirmed.

Dated, Washington, DC
May 7, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member