

FACTUAL HISTORY

On August 12, 1989 appellant, then a 38-year-old letter carrier, filed a claim for injuries sustained on that date in a motor vehicle accident. The Office assigned the claim file number 02-0605028 and accepted her claim for contusions of the left shoulder and back.¹

On April 10, 1995 appellant filed an occupational disease claim for impingement of the right shoulder.² The Office assigned the claim number 02-759359.

On June 6, 1995 appellant underwent a resection of the distal clavical and subacromial decompression of the left shoulder.

On October 16, 1995 appellant filed a notice of recurrence of disability on March 21, 1995 causally related to her August 12, 1989 employment injury. By decision dated January 31, 1996, the Office found that she had failed to establish a recurrence of disability due to her accepted employment injury and, in a decision dated January 22, 1997, the Office denied modification of its January 31, 1996 decision. By decision dated May 6, 1999, the Board affirmed the Office's January 22, 1997 decision finding that appellant had failed to establish a recurrence of disability beginning March 21, 1995.³ The Board found, however, that the Office should develop the evidence to determine whether she sustained a new injury on March 21, 1995.

In a decision dated January 19, 2000, the Office denied appellant's claim for impingement syndrome of the right shoulder. By decision dated November 13, 2000, a hearing representative set aside the Office's January 19, 2000 decision after finding a conflict on the issue of whether appellant had continuing disability after her 1995 surgery due to her 1989 and 1991 employment injuries.

Based on the report of Dr. Robert Dennis, a Board-certified orthopedic surgeon, who performed an impartial medical examination, the Office, in an April 12, 2001 decision, accepted that appellant sustained a rotator cuff tear of the left shoulder and required left shoulder surgery on June 6, 1995 due to her August 12, 1989 and February 15, 1991 employment injuries.⁴ The Office further determined that appellant's disability due to her left shoulder condition resolved no later than March 19, 2001. By decision dated January 24, 2002, a hearing representative affirmed the Office's April 12, 2001 decision.

The Office combined appellant's claims into file number 02-759359.

¹ On January 4, 1993 appellant filed a notice of recurrence of disability on December 15, 1991, due to her August 12, 1989 employment injury. The Office found that she had not established a recurrence of disability in decisions dated May 27, 1993 and September 23, 1994.

² Appellant also injured her left ankle due to a 1991 employment injury.

³ Docket No. 97-1606 (issued May 6, 1999).

⁴ In a report dated March 19, 2001, Dr. Dennis found that appellant's left shoulder showed good range of motion and strength with some "mild residual tenderness in the subacromial bursa region."

On July 1, 2002 appellant filed a claim for a schedule award. In support of her claim, she submitted an impairment evaluation dated March 13, 2002 from Dr. David Weiss, an osteopath.⁵ He discussed appellant's complaints of pain and weakness of the bilateral upper extremities and noted findings of tenderness of the focal acromioclavicular point and anterior cuff of the left shoulder. He measured range of motion for the left shoulder as 180 degrees of forward elevation, 180 degrees abduction, 75 degrees cross-over adduction, 90 degrees external rotation and internal rotation to T6. Dr. Weiss noted tenderness over the medial epicondyle of the left elbow, listed range of motion for the elbow and performed manual muscle testing. For the left upper extremity, he determined that appellant had a 10 percent impairment due to arthroplasty of the distal clavical according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).⁶ He further found that appellant had a 4 percent impairment due to loss of strength of the left supraspinatus, a 6 percent impairment due to loss of strength of the left biceps and a 9 percent impairment due to loss of strength of the left deltoid, for a combined left upper extremity impairment of 40 percent.⁷ Dr. Weiss added 3 percent for pain and concluded that appellant had a 43 percent permanent impairment of the left upper extremity.⁸ He opined that she reached maximum medical improvement on March 13, 2002.

An Office medical adviser reviewed Dr. Weiss' report on August 7, 2002. He found that appellant had no impairment due to loss of range of motion of the left shoulder.⁹ The Office medical adviser noted that, while Dr. Weiss provided an impairment finding due to weakness, the impartial medical examiner had not found any motor weakness in his examination. He determined that appellant had a 10 percent permanent impairment of the left upper extremity due to her subacromial decompression and resection of the distal clavical pursuant to Table 16-27 on pages 506 of the A.M.A., *Guides*.

By decision dated November 1, 2002, the Office granted appellant a schedule award for a 10 percent permanent impairment of the left upper extremity. The period of the award ran for 31.20 weeks from March 20 to October 24, 2001.

On November 12, 2002 appellant, through his attorney, requested an oral hearing, which was held on December 2, 2004. Counsel contended that the Office did not properly adjudicate the issue of whether appellant had an employment injury to her right shoulder and erred in relying on the report of the impartial medical examiner in rendering its schedule award decision.

By decision dated March 4, 2005, the hearing representative affirmed the November 1, 2002 decision. The hearing representative noted that the Office effectively denied appellant's right shoulder claim in its April 12, 2001 decision.

⁵ In his report, Dr. Weiss evaluated appellant's impairment of the bilateral upper and lower extremities.

⁶ A.M.A., *Guides* 506, Table 16-27.

⁷ *Id.* at 484, 492, Tables 16-15, 16-11.

⁸ *Id.* at 574, Figure 18-1.

⁹ *Id.* at 476-479, Figures 16-40, 16-43, 16-46.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹⁰ and its implementing regulation,¹¹ sets 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.¹² Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.¹³

ANALYSIS

The Office accepted that appellant sustained a contusion and rotator cuff tear of the left shoulder due to employment injuries. She underwent a resection of the distal clavical and subacromial decompression of the left shoulder on June 6, 1995. On July 1, 2002 appellant filed a claim for a schedule award and submitted a report dated March 13, 2002 from Dr. Weiss. He discussed appellant's complaints of weakness and noted findings of tenderness of the focal acromioclavical point and anterior cuff of the left shoulder. He measured her range of motion and performed manual muscle testing. Dr. Weiss opined that appellant had a 10 percent impairment due to arthroplasty of the distal clavical pursuant to Table 16-27 on pages 506 of the A.M.A., *Guides*. He further found that appellant had a 4 percent impairment due to loss of strength of the left supraspinatus, a 6 percent impairment due to loss of strength of the left biceps and a 9 percent impairment due to loss of strength of the left deltoid, for a combined left upper extremity impairment of 40 percent.¹⁴ Dr. Weiss added 3 percent for pain and concluded that appellant had a 43 percent permanent impairment of the left upper extremity.¹⁵ Regarding his impairment finding due to motor weakness, however, Dr. Weiss failed to provide the necessary physical findings in support of his impairment rating regarding motor strength weakness and failed to identify the specific peripheral nerves responsible for the impairment as set forth in the A.M.A., *Guides*. He did not properly explain how he calculated his impairment rating under the respective tables by identifying and grading the nerve involved. Additionally, Dr. Weiss provided appellant an additional award of three percent for pain under Chapter 18 of the A.M.A., *Guides*. The Board notes, however, that examiners should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.¹⁶ Consequently, Dr. Weiss'

¹⁰ 5 U.S.C. § 8107.

¹¹ 20 C.F.R. § 10.404.

¹² 20 C.F.R. § 10.404(a).

¹³ See FECA Bulletin No. 01-05 (issued January 20, 2001).

¹⁴ *Id.* at 484, 492, Tables 16-15, 16-11.

¹⁵ *Id.* at 574, Figure 18-1.

¹⁶ See FECA Bulletin No. 01-01 (issued January 31, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); A.M.A., *Guides* at 18.3(b).

impairment rating does not conform to the A.M.A., *Guides*. It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment and the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.¹⁷

In a report dated August 7, 2002, an Office medical adviser reviewed Dr. Weiss' findings and properly determined that the evidence did not demonstrate a loss of range of motion of the shoulder.¹⁸ He determined that appellant had a 10 percent impairment due to arthroplasty of the distal clavical pursuant to Table 16-27 on pages 506 of the A.M.A., *Guides*. The Board finds that the Office medical adviser's finding conforms to the A.M.A., *Guides* and constitutes the weight of the medical evidence.

On appeal, appellant's attorney contends that a conflict exists between Dr. Weiss and the Office medical adviser. As noted above, however, Dr. Weiss' impairment evaluation did not conform to the A.M.A., *Guides* and thus is of diminished probative value.¹⁹ The attorney further argues that the Office erred in failing to issue a final decision regarding whether appellant's right shoulder condition was employment related and, consequently, failed to evaluate her right upper extremity impairment. The Board's jurisdiction, however, extends only to a review of final decisions by the Office issued within one year of the date of the filing of an appeal.²⁰

CONCLUSION

The Board finds that appellant has not established that she has more than a 10 percent permanent impairment of the left upper extremity.

¹⁷ *John L. McClanic*, 48 ECAB 552 (1997).

¹⁸ A.M.A., *Guides* at 476-479, Figures 16-40, 16-43, 16-46.

¹⁹ *Derrick C. Miller*, 54 ECAB 266 (2002).

²⁰ 20 C.F.R. § 501.2(c); 501.3(d)(2).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2005 is affirmed.

Issued: February 15, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board