

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VALERIE D. GARDNER and U.S. POSTAL SERVICE,
LONGMONT POST OFFICE, Longmont, Colo.

*Docket No. 96-941; Submitted on the Record;
Issued January 14, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On March 5, 1991 appellant, then a 31-year-old rural letter carrier, was lifting a mail relay from the back seat to the front seat of her postal vehicle when she developed severe pain in the right shoulder. An October 9, 1991 arthroscopy of the right shoulder showed posterior subluxation of the right shoulder with a partial tear in the posterior labrum and possible biceps tendinitis. On December 30, 1991 appellant underwent surgery for a capsular shift of the right shoulder. The Office of Workers' Compensation Programs accepted appellant's claim for a right shoulder strain and right shoulder arthroscopy and began payment of temporary total disability compensation effective October 18, 1991. In a December 20, 1995 decision, the Office issued a schedule award for a six percent permanent impairment of the right arm.

The Board finds that the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

In a July 19, 1994 report, Dr. Kenneth J. Cavanaugh, a Board-certified orthopedic surgeon, described appellant's range of motion in the right shoulder. He reported that she had flexion to 160 degrees, extension to 40 degrees, abduction to 165 degrees, normal adduction, internal rotation to 40 degrees and external rotation to 90 degrees. He indicated that appellant had chronic pain with overuse which occurred on a daily basis, tenderness over the anterior portion of the shoulder and chronic bursitis.

In a November 27, 1995 memorandum, an Office medical adviser reviewed Dr. Cavanaugh's report. He indicated that appellant had a 1 percent permanent impairment for 160 degrees of flexion, a 1 percent permanent impairment for 40 degrees of extension, a 1 percent permanent impairment for 165 degrees of abduction and a 3 percent permanent impairment for 40 degrees of internal rotation.⁴ He concluded that appellant had a six percent permanent impairment of the right arm.

The Office medical adviser properly determined appellant's permanent impairment due to loss of motion under the A.M.A., *Guides*. However, he did not take into account the pain, tenderness and chronic bursitis reported by Dr. Cavanaugh in his examination of appellant. Pain is one of the elements to be taken into account in determining the extent of permanent impairment. The A.M.A., *Guides* provide a grading scheme and procedure for determining impairment of an affected body part due to pain, discomfort or loss of sensation.⁵ The case must therefore be remanded. On remand the Office medical adviser should determine the extent of permanent impairment caused by the pain, tenderness and chronic bursitis in appellant's right shoulder. After further development as it may find necessary the Office should issue a *de novo* decision.

³ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment*, pp. 42-45, figures 38, 41, 44 (4th ed., 1993).

⁵ *Joseph Greer, Jr.*, 34 ECAB 1525 (1983).

The decision of the Office of Workers' Compensation Programs, dated December 20, 1995, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
January 14, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member