

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDY A. RAHN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, St. Cloud, Minn.

*Docket No. 96-2187; Submitted on the Record;
Issued November 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she has more than a 17 percent permanent impairment of her right upper extremity for which she received a schedule award.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal, and the entire case record. The facts of the case are accurately set forth in detail in the June 27, 1995 decision of the hearing representative of the Office of Workers' Compensation Programs dated June 27, 1995 and these facts are hereby adopted by the Board. The Board finds that appellant has a total permanent impairment of her right upper extremity of 18 percent.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³ Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

In the present case, the Office accepted that on November 14, 1989 appellant sustained employment-related acute bilateral shoulder and neck strains and a right glenoid labrum tear which required arthroscopy. By decision dated October 16, 1992, the Office granted appellant a schedule award for a 17 percent permanent impairment of her right upper extremity and a 7 percent permanent impairment of her left upper extremity.

Subsequent to the Office's October 16, 1992 award, based on additional evidence both submitted by appellant and developed by the Office, the Office accepted the additional condition of employment-related degenerative changes of the right acromioclavicular joint. In order to determine whether appellant was entitled to an increase in the percentage of permanent impairment of the right shoulder, the Office referred appellant to Dr. Steven M. Bardolph, a Board-certified orthopedic surgeon, for a second opinion.

In a report dated October 12, 1993, Dr. Bardolph noted the history of appellant's injury and treatment and listed his findings on examination. Specifically, he found appellant to have forward flexion of 120 degrees, extension of 45 degrees, abduction to 100 degrees, adduction to 10 degrees, external rotation to 30 degrees and internal rotation to 30 degrees.⁶ Dr. Bardolph stated that he felt appellant had a 15 percent permanent impairment of the right upper extremity, which was slightly better than the 17 percent she received in a schedule award. In a supplemental report dated February 18, 1994, however, Dr. Bardolph stated that after reviewing x-rays of appellant's acromioclavicular joint, he felt that appellant did have a 17 percent permanent impairment of the right upper extremity.

The Office forwarded Dr. Bardolph's report to Dr. L. Dean Jansen, an Office medical adviser, for review. In his report dated May 16, 1994, Dr. Jansen applied the standards of the fourth edition of the A.M.A., *Guides* to the findings and range of motion measurements of Dr. Bardolph and determined that appellant merited a 4 percent permanent impairment for pain in the distribution of the axillary nerve based on Table 15, page 54 of the A.M.A., *Guides*, a 4 percent permanent impairment for forward flexion and 0 percent for extension pursuant to figure 38, page 43 of the A.M.A., *Guides*, 4 percent for abduction and 1 percent for adduction pursuant to figure 41, page 44 of the A.M.A., *Guides*, and 4 percent for internal rotation and 1 percent for external rotation pursuant to figure 44, page 45 of the A.M.A., *Guides*. Using the combined values chart on page 322 of the A.M.A., *Guides*, Dr. Jansen determined that appellant had a total permanent impairment of the right upper extremity of 17 percent. The Office medical adviser specifically stated that the range of motion criteria for the shoulder measurements included any impairment of appellant's right acromioclavicular joint, and concluded that based on the

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁶ Dr. Bardolph noted that although he felt appellant reached maximum medical improvement in the first three months of 1991, appellant's range of motion for abduction and forward flexion in 1993 was actually better than when she was last rated in May 1991 when her physician found her to have forward flexion of 110 degrees, extension of 45 degrees, abduction of 65 degrees, adduction of 10 degrees, internal rotation of 30 degrees and external rotation of 30 degrees.

evidence of record, there was no objective basis to support an increase in the amount of the schedule award.

In a decision dated July 26, 1994, the Office determined that appellant had not established greater than a 17 percent permanent impairment, for which she had received a schedule award.

On August 25, 1994 appellant requested a hearing before an Office representative. At the hearing held on April 18, 1995, appellant's counsel asserted that appellant was not contesting the award of 17 percent for range of motion of the right upper extremity, and was further not contesting the earlier award of a 7 percent permanent impairment of the left upper extremity, but was contesting the Office's failure to award appellant an additional percentage for the recently accepted degenerative changes of the right acromioclavicular joint.

In a decision dated June 27, 1995, the Office hearing representative determined that appellant had not established greater than a 17 percent permanent impairment of the right upper extremity, for which she had received a schedule award.

The Office had based its assessment of appellant's right upper extremity impairment on the application of the A.M.A., *Guides* to the findings of Dr. Bardolph, the Office second opinion physician. The Board has reviewed the evaluation of the Office medical adviser and notes that it is in accordance the appropriate standards of the A.M.A., *Guides* with the exception of its assessment of the degree of appellant's right shoulder impairment upon extension. According to page 15 of the A.M.A., *Guides*, in general, range of motion measurements are rounded to the nearest 10 degrees and are then converted into impairment estimates using appropriate tables. The 45-degree loss of extension of the right shoulder is therefore rounded to 50 degrees, yielding a 1 percent permanent impairment, rather than 0 percent.⁷ Appellant is not entitled, however, to any additional impairment rating for degenerative changes of crepitation of the acromioclavicular joint, as under the fourth edition of the A.M.A., *Guides*, properly applicable to this case, impairments for joint crepitation may not be added to impairments for range of motion for the upper extremity.⁸ Consequently, the evidence shows that appellant is entitled to a total schedule award for her right upper extremity impairment of 18 percent.

The decision of the Office of Workers' Compensation Programs dated June 27, 1995 is modified to reflect that appellant is entitled to a total schedule award for her right upper extremity impairment of 18 percent.

⁷ See figure 38, page 43; see also Federal (FECA) Procedure Manual Part 3 -- Medical, *Schedule Awards*, Chapter 3.700(3)(b) (October 1990). "The policy of the Office is to round the calculated percentage of impairment to the nearest whole point."

⁸ In the present case, the fourth edition of the A.M.A., *Guides*, provides the appropriate standards for evaluating appellant's right upper extremity impairment in that the Office's June 27, 1995 *de novo* decision, based on new evidence, was issued after November 1, 1994, the effective date of the fourth edition. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (September 1993). Pursuant to the fourth edition of the A.M.A., *Guides*, impairments based on joint crepitation and impairments based on range of motion are mutually exclusive; see Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.0700 Exhibit 4.

Dated, Washington, D.C.
November 10, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member