

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NICHOLAS J. CATALDO and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-1738; Submitted on the Record;  
Issued March 17, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant has established that he has greater than a 20 percent permanent impairment of the right shoulder.

On April 22, 1982 appellant, then a 59-year-old steamfitter, filed a claim for schedule award based on a work-related right shoulder injury.

In a report dated September 9, 1982, Dr. Phillip J. Marone, appellant's treating physician Board-certified in orthopedic surgery, determined that appellant had a 25 percent overall disability rating. However, Dr. Marone stated that he did not rely on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* exclusively to arrive at his determination.

On November 24, 1982 the Office of Workers' Compensation Programs' medical adviser reviewed Dr. Marone's report and recommended that appellant's case record be referred to a Board-certified orthopedic surgeon because Dr. Marone did not rely on the A.M.A., *Guides* to support his impairment rating.

On February 22, 1983 Dr. Stephen J. Bosacco, Board-certified in orthopedic surgery and an Office consultant, examined appellant and determined that he had a 20 percent loss of strength in the right shoulder.

In an undated report, the Office medical adviser reviewed Dr. Bosacco's report and determined that appellant had an 11 percent permanent impairment disability rating of his right shoulder.

On June 22, 1984 the Office granted appellant an 11 percent permanent impairment rating of the right arm.

On July 27, 1995 the Office referred appellant to Dr. Noubar A. Didizian, Board-certified in orthopedic surgery and an Office consultant, for a schedule award evaluation.<sup>1</sup> On August 25, 1995 Dr. Didizian determined that appellant had an 11 percent permanent impairment of the right shoulder. On October 19, 1995 the Office medical adviser, after review of his evaluation, recommended that the Office approve an additional 1 percent permanent impairment rating to his 11 percent rating for his right shoulder.

On November 2, 1995 the Office awarded appellant an additional 1 percent permanent impairment for the right shoulder.

On November 16, 1995 appellant requested an oral hearing based on the Office's November 2, 1995 decision granting an additional one percent impairment rating for his right shoulder.

On April 30, 1996 a hearing was held and Dr. Ronald A. Codario, appellant's treating physician and Board-certified in internal medicine, testified that he disagreed with the Office's 12 percent impairment rating and submitted a May 3, 1996 medical report finding that appellant's permanent impairment rating of the right shoulder was 27 percent.

In a decision issued and finalized on November 15, 1996, the hearing representative remanded the case to the Office on the grounds that a conflict of medical evidence existed between the reports of Drs. Didizian and Codario, and directed that the Office refer the case record to an impartial medical examiner for resolution of the conflict. On December 18, 1996 the Office referred the case record and a statement of accepted facts to Dr. Robert R. Bachman, Board-certified in orthopedic surgery, for a determination regarding appellant's disability and percentage of permanent impairment.

In a medical report dated February 24, 1997, Dr. Bachman stated that he had reviewed appellant's medical records and had examined him on January 30, 1997. Based upon the results of the examination, he found that appellant had a rotator cuff shoulder tear and biceps tendon caused by a work-related injury on June 22, 1981. Based on range of motion findings and the A.M.A., *Guides*, (4<sup>th</sup> ed. 1993), Dr. Bachman found that appellant had a 20 percent permanent impairment of the right shoulder based on the following range of motion findings: 40 degrees of abduction; 40 degrees of backward flexion; 40 degrees of forward flexion; 60 degrees of inward rotation; and 30 degrees of outward rotation. He also determined that appellant had reached maximum medical improvement.

On March 27, 1997 an Office medical adviser reviewed Dr. Bachman's report, applied the standards of the A.M.A., *Guides* (4th ed. 1993) to his findings, and concluded that appellant had a 20 percent permanent impairment of the right arm.

On April 8, 1997 the Office awarded appellant an additional 8 percent permanent impairment for his right arm.

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<sup>1</sup> On June 6, 1995 the Office notified appellant that it had received information that he had had a recurrence of disability.

The Board finds that appellant has no more than a 20 percent permanent impairment for which he received a schedule award.

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 Office, and the Board has concurred in such adoption, as a standard for evaluating schedule losses.<sup>2</sup>

The Board notes that the A.M.A., *Guides* were prepared to allow one physician to use the raw clinical data of another physician to arrive at a uniform, standardized rating of permanent impairment.<sup>3</sup> Dr. Bachman's clinical data can be readily extrapolated and evaluated within the tables and guidelines as presented. Although he performed complete range of motion evaluations, he did not calculate appellant's percentage of losses for each evaluation.<sup>4</sup> The Office properly based appellant's schedule award on the calculation of its medical adviser since he used the A.M.A., *Guides* and properly determined that appellant had no more than a 20 percent permanent impairment of his right arm.

The Board held that the opinion of an impartial medical specialist resolving a conflict of medical opinion must be given special weight, if sufficiently well rationalized and based upon a proper factual background.<sup>5</sup>

In the instant case, the Office medical adviser reviewed Dr. Bachman's report, applied the standards of the A.M.A., *Guides*, (4th ed. 1993) to his findings, and concluded that appellant had a 20 permanent impairment of his right shoulder. In his calculations, the Office medical adviser noted that under the A.M.A., *Guides* appellant's abduction measure of 40 degrees retained was equal to a 6 percent impairment,<sup>6</sup> that 40 degrees of flexion was equal to 10 percent impairment,<sup>7</sup> that 40 degrees of extension was equal to 1 percent impairment,<sup>8</sup> that 60 percent degrees of internal rotation was equal to 2 percent impairment<sup>9</sup> and that 30 percent external rotation was equal to 1 percent impairment<sup>10</sup> for a total of 20 percent disability impairment.<sup>11</sup> Dr. Bachman also found a zero percent impairment for neurological loss.

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<sup>2</sup> *James A. England*, 47 ECAB 115 (1995).

<sup>3</sup> A.M.A., *Guides*.

<sup>4</sup> Because Dr. Bachman was an impartial specialist selected to resolve the conflict in the medical opinion evidence, his well-rationalized report based on the entire record and an examination of appellant is entitled to special weight and constitutes the weight of the medical evidence. *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>5</sup> *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>6</sup> A.M.A., *Guides*, figure 41.

<sup>7</sup> *Id.* 43, figure 38.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* 45, figure 44.

<sup>10</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated April 8, 1997 is affirmed.<sup>12</sup>

Dated, Washington, D.C.  
March 17, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>11</sup> The Office medical adviser properly added the impairment values of each shoulder motion because the relative values of each shoulder functional unit has been taken into consideration in the impairment charts. *Id.* at 44.

<sup>12</sup> The Board notes that subsequent to the Office's April 8, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).