U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD DAVIS and DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, Okla.

Docket No. 97-1824; Submitted on the Record;
Issued March 17, 1999

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than a 12 percent permanent impairment of the right upper extremity, for which he has already received a schedule award.

The Board has duly reviewed the evidence of record in this appeal and finds that appellant has no more than a 12 percent permanent impairment of the right upper extremity, for which he has already received a schedule award.

On April 20, 1993 appellant, then a aircraft sheet metal mechanic, filed a claim for an occupational disease (Form CA-2) alleging that he first became aware that his right shoulder condition was caused or aggravated by his employment on April 19, 1993. The Office of Workers' Compensation Programs accepted appellant's claim for right rotator cuff syndrome and authorized right shoulder surgery. On May 21, 1996 appellant filed a claim for a schedule award (Form CA-7). By decision dated January 3, 1997, the Office awarded appellant a schedule award for a 12 percent permanent impairment of the right upper extremity for the period November 7, 1996 through July 27, 1997.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation,[2] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[3] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of

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[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.304.

[3] 5 U.S.C. § 8107(c)(19).

a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4]

In the present case, the Office accepted appellant's claim for right rotator cuff syndrome. Thereafter, in a September 19, 1995 letter, the Office advised Dr. Griffith Miller, a family practitioner, to determine the extent of appellant's permanent impairment based on the fourth edition of the A.M.A., *Guides*. In an August 17, 1995 medical report, Dr. Miller indicated appellant's employment, family, social and medical treatment history. On physical examination, Dr. Miller indicated that appellant could flex 90 degrees, extend 10 degrees, abduct 90 degrees, adduct 10 degrees, internally rotate 10 degrees and externally rotate 20 degrees. Dr. Miller opined that due to the severe limitation of motion of appellant's right shoulder, severe pain involved with motion and decreased range of motion in the shoulder, appellant had an 18 percent permanent disability of the right shoulder. Dr. Miller further opined that due to the crepitance involved through active and passive motion, appellant had a 20 percent permanent disability of the right shoulder. In addition, Dr. Miller opined that due to the weakness and pain involved in the shoulder musculature innervated by the axillary peripheral nerve, appellant had a 19 percent permanent disability of the right shoulder. Dr. Miller also opined that based on the weakness and pain involved in the shoulder musculature innervated by the supraclavicular peripheral nerve, appellant had a 10 percent permanent disability of the right shoulder. Dr. Miller concluded that appellant had a 67 percent permanent disability of the right shoulder as a result of his injury. Based on the revised third edition of the A.M.A., *Guides,* Dr. Miller further concluded that appellant had a 39 percent permanent disability of the whole person.

By letter dated May 17, 1996, the Office advised appellant's counsel that Dr. Miller's report was insufficient to establish that appellant was entitled to a schedule award because it was not based on the proper edition of the A.M.A., *Guides*. By letter of the same date, the Office again advised Dr. Miller to determine the extent of appellant's permanent impairment based on the fourth edition of the A.M.A., *Guides.*

By letter dated May 29, 1996, appellant's counsel submitted Dr. Miller's November 9, 1995 letter indicating that he should have stated that his impairment rating of 39 percent was based on the fourth edition of the A.M.A., *Guides* rather than the third edition of the A.M.A., *Guides*. Appellant's counsel resubmitted Dr. Miller's August 17, 1995 medical report.

On August 1, 1996 the Office referred appellant along with his medical records, a list of specific questions, and a statement of accepted facts to an Office medical adviser to determine the extent of appellant's impairment. The Office specifically asked the Office medical adviser to review the December 22, 1994 medical report of Dr. Mark F. Kowalski which revealed that

[4] *See James J. Hjort,* 45 ECAB 595 (1994); *Luis Chapa, Jr.,* 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne,* 38 ECAB 168 (1986).

appellant had a three percent permanent impairment of the right upper extremity,[5] and Dr. Miller's August 17 and November 9, 1995 medical reports.

The Office medical adviser reviewed the medical evidence of record and noted the findings of Drs. Kowalski and Miller. Based on Dr. Kowalski's findings, the Office medical adviser calculated a three percent impairment rating. Based on Dr. Miller's findings, the Office medical adviser calculated 19 percent impairment rating. The Office medical adviser applied Figures 38, 41 and 44 on pages 43, 44 and 45 of the fourth edition of the A.M.A., *Guides*.

By letter dated September 9, 1996, the Office referred appellant along with his medical records and a statement of accepted facts to Dr. Houshang Seradge, a Board-certified orthopedic surgeon, for further, examination. By letter of the same date, the Office advised Dr. Seradge of the referral.

In an October 4, 1996 medical report, Dr. Seradge provided a history of appellant's employment injury and medical treatment. Dr. Seradge also provided his findings on physical and objective examination. Dr. Seradge opined that appellant had severe impingement of the right shoulder due to untreated arthritic acromiolclavicular joint hypertrophy which was part of appellant's accepted medical condition. Dr. Seradge further opined that appellant had cervical radiculopathy with narrowing of the joint spaces on the neck which was not part of appellant's accepted medical condition. Dr. Seradge recommended a Lido evaluation of appellant's muscle strength and endurance on the right shoulder to determine the extent of involvement of the right shoulder.

Dr. Seradge's November 7, 1996 supplemental medical report revealed the following test results of the Lido evaluation: flexion was 100 degrees; extension was 10 degrees; abduction was 104 degrees; adduction was 14 degrees; external rotation was 75 degrees; and internal rotation was 72 degrees. The results further revealed the following strength deficit: flexion was 8 degrees; extension was 19 degrees; abduction was 15 degrees, adduction was 26 degrees, external rotation was 28 degrees; and internal rotation was 0 degrees. Based on the fourth edition of the A.M.A., *Guides*, Dr. Seradge opined that appellant had a nine percent impairment for abnormal motion. According to Table 18, page 58 and Table 19, page 59, appellant had an estimated five percent impairment for moderate crepitation to his acromiolclavicular joint. Based on the combined values chart on page 322, Dr. Seradge determined that appellant had a 14 percent impairment of his right shoulder for abnormal motion and his severe acromiolclavicular hypertrophy.

An Office medical adviser reviewed the medical evidence of record and stated that the date of maximum medical improvement was November 7, 1996, the date of Dr. Seradge's impairment evaluation. Using Dr. Seradge's measurements, the Office medical adviser determined that 100 degrees of flexion resulted in a 5 percent impairment, 10 degrees of

[5] In his December 22, 1994 medical report, Dr. Kowalski indicated appellant's medical treatment and his range of motion findings. Specifically, Dr. Kowalski provided that appellant had 160 degrees of flexion, 45 degrees of extension, 145 degrees of abduction, 45 degrees of adduction, 90 degrees of external rotation and 70 degrees of internal rotation. Based on the fourth edition of the A.M.A., *Guides*, Dr. Kowalski determined that appellant had one percent loss of flexion, a one percent loss of abduction and a one percent loss of internal rotation totaling a three percent impairment of the right upper extremity or a two percent impairment of the whole person.

extension resulted in a 2 percent impairment, 104 degrees of abduction resulted in a 4 percent impairment, 14 degrees of adduction resulted in a 1 percent impairment, 72 degrees of internal rotation resulted in a 0 percent impairment, and 75 degrees of external rotation resulted in a 0 percent impairment based on figures 38, 41 and 44 on pages 43 through 45 of the fourth edition of the [A.M.A.,] *Guides*. The Office medical adviser, thus, concluded that appellant had a 12 percent permanent impairment for loss of use of his right upper extremity. The Office medical adviser stated that "[i]n my opinion, the acromioclavicular joint is an integral part of the shoulder joint, and its function is reflected in the range of motion figures of the shoulder. Therefore, no consideration is given for crepitation of the acromioclavicular joint, as this would be duplication under the Office's regulations (FECA Bulletin # 95-17) and the fourth edition [A.M.A.,] *Guides* (page 58)." Inasmuch as the Office medical adviser properly applied the A.M.A., *Guides*, the Board, finds that appellant is not entitled to no more than a 12 percent permanent impairment of the right upper extremity, for which he has already received a schedule award.[6]

The Board further finds that Drs. Miller and Seradge failed to properly apply the fourth edition of the A.M.A., *Guides* inasmuch as they considered crepitation for the acromioclavicular joint which resulted in a duplication of impairments.

The January 3, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

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

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] According to page 15 of the fourth edition 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 104 degree loss of abduction is therefore rounded to 110 degrees, yielding the same impairment as the 110 degree loss of abduction, 3 percent rather than the 4 percent as calculated by the Office medical adviser. Thus, appellant would have been entitled to an 11 percent permanent impairment, rather than a 12 percent permanent impairment of the right upper extremity.