

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEE M. STRAUBINGER and DEPARTMENT OF THE TREASURY,
U.S. CUSTOM SERVICE, Miami, FL

*Docket No. 99-2149; Submitted on the Record;
Issued September 18, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has greater than a five percent impairment of her right upper extremity for which she received a schedule award.

On July 31, 1995 appellant, then a 24-year-old customs inspector, filed a claim alleging that she sustained an injury to her right shoulder on July 27, 1995 while in the performance of duty. Her claim was accepted by the Office of Workers' Compensation Programs for a right rotator cuff tear. Appellant underwent two surgical procedures related to the accepted condition. Appropriate compensation benefits were paid.

On April 28, 1999 appellant filed a claim for a schedule award based on permanent impairment to her right upper extremity. By letter dated May 5, 1999, the Office requested that appellant's attending physician, Dr. Audie M. Rolnick, a Board-certified orthopedic surgeon, evaluate appellant to determine the extent of permanent impairment in conformance with the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition). He was provided with a form on which to set forth his findings and calculate the impairment of appellant's right upper extremity.

On May 17, 1999 appellant was examined by Dr. Rolnick who opined that appellant had reached maximum medical improvement as of February 24, 1999. With regard to the range of motion of appellant's right shoulder, Dr. Rolnick found 50 degrees retained internal rotation; 75 degrees retained external rotation; 180 degrees retained forward elevation (flexion); 30 degrees retained backward elevation (extension); 180 degrees retained abduction; and 60 degrees retained adduction. He noted that appellant had additional impairment of the upper extremity due to weakness, atrophy, pain or loss of sensation which he estimated at one percent. Dr. Rolnick concluded that appellant had a total impairment of five percent of her right upper extremity.

On June 9, 1999 the Office granted appellant a schedule award for a five percent impairment of her right arm. The period of the award ran from February 24, 1999, the date of maximum medical improvement, to June 13, 1999.

The Board finds that appellant has no more than a five percent impairment of her right upper extremity for which she received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act and its implementing federal regulations 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.¹ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determinations is a matter which rests in the sound discretion of the Office. However, the Board has stated that, 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 Office has adopted the A.M.A., *Guides* as the standard for evaluating permanent impairment for schedule award purposes and the Board has concurred with the Office's adoption of this standard.²

In providing an estimate of the percentage loss of use of a member of the body listed in the schedule provisions, a description of a claimant's impairment must be obtained from his or her physician which is in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.³

In the present case, the Office accepted that appellant sustained a right rotator cuff tear for which she underwent surgical correction. Appellant's attending physician, Dr. Rolnick, provided range of motion findings pertaining to appellant's right upper extremity. The Board notes that 50 degrees retained internal rotation corresponds with 2 percent impairment;⁴ 75 degrees retained external rotation corresponds with 0 percent impairment;⁵ 180 degrees retained forward elevation (flexion) corresponds with 0 percent impairment;⁶ 30 degrees retained backward elevation (extension) corresponds with 1 percent impairment;⁷ 180 degrees retained

¹ 5 U.S.C. § 8107(b); 20 C.F.R. § 10.404.

² See *Kenneth D. Loney*, 47 ECAB 660 (1996); *Harry D. Butler*, 43 ECAB 859 (1992).

³ See *Robert B. Rozelle*, 44 ECAB 616 (1993); *James E. Archie*, 43 ECAB 180 (1991). The Board has recognized that an attending physician, who has an opportunity for examination, is often in a better position to make certain judgments regarding schedule awards. See *Joseph H. Stuart*, 44 ECAB 583 (1993).

⁴ Figure 44, Upper Extremity Impairments Due to Lack of Internal or External Rotation of Shoulder, A.M.A., *Guides* at 45 (4th ed. 1993).

⁵ *Id.*

⁶ Figure 38, Upper Extremity Impairments Due to Lack of Flexion and Extension of Shoulder, A.M.A., *Guides* at 43 (4th ed. 1993).

⁷ *Id.*

abduction corresponds with 0 percent impairment;⁸ and 60 degrees retained adduction corresponds with 0 percent impairment.⁹ The Board notes that Dr. Rolnick's report reveals a total of three percent impairment for loss of range of motion. In addition, Dr. Rolnick found there was additional impairment of one percent of function of the extremity due to weakness, atrophy, pain or loss of sensation. The Board notes that applying the Combined Values Chart to the three percent loss of range of motion and one percent loss due to pain or loss of sensation, appellant has a total impairment of four percent of her right upper extremity.¹⁰ The Office granted appellant a schedule award for a five percent impairment of her right upper extremity based on the estimate recommended by Dr. Rolnick. Applying the A.M.A., *Guides*, the Board finds that appellant has no greater impairment than that awarded by the Office.

On appeal, appellant contends that, as a result of surgery, she has six scars to her right upper extremity and the schedule award does not adequately compensate her for impairment to both her career and social life. This argument reflects a misunderstanding as to the nature of schedule awards and compensation for loss of wage-earning capacity.¹¹ Disability for work under section 8105 of the Act is not a factor included in a schedule award impairment rating under section 8107.¹² A schedule award is not intended to be compensation for wage loss or potential wage loss.¹³ Section 8107 provides a compensation schedule for payment of awards for permanent impairment of listed body members. The schedule establishes how many weeks of compensation an employee will receive in the event of total functional loss or dismemberment. Partial loss of function of the bodily member is awarded for a proportionate number of weeks. A schedule award is made without regard to whether or not there is a loss of wage-earning capacity resulting from the injury and regardless of its effects upon employment or social opportunities.¹⁴ With regard to the issue of any scarring related to surgery, appellant has failed to introduce any evidence from a physician which evaluates such impairment.¹⁵ For these reasons, the Board finds that appellant has not established entitlement to a schedule award greater than that granted by the Office.

⁸ Figure 41, Upper Extremity Impairments Due to Lack of Abduction and Adduction of Shoulder, A.M.A. *Guides* at 44 (4th ed.).

⁹ *Id.*

¹⁰ Combined Values Chart, A.M.A., *Guides* at 322.

¹¹ See *Robert L. Mitchell*, 34 ECAB 8 (1982).

¹² See *Donald S. Saunders*, 41 ECAB 516 (1990).

¹³ See *Catherine R. Birdsell*, 32 ECAB 907 (1981).

¹⁴ See *Harry D. Butler*, *supra* note 2.

¹⁵ See section 13.5, Scars and Skin Grafts, A.M.A., *Guides* at 279-80 (4th ed. 1993).

The June 9, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 18, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member