

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHAWNNA FRYE-WILSON and U.S. POSTAL SERVICE,  
POST OFFICE, Tiffin, OH

*Docket No. 00-1441; Submitted on the Record;  
Issued July 17, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

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

On October 18, 1996 appellant, then a 31-year-old city letter carrier, caught her mail satchel on a railing, which caused her right shoulder to jerk back. She returned to limited duty and stopped work on October 1, 1997.<sup>1</sup> The Office of Workers' Compensation Programs accepted appellant's claim for right shoulder rotator cuff strain and right shoulder impingement.<sup>2</sup>

On August 10, 1997 appellant filed a schedule award claim. The Office referred appellant, together with her medical record and a list of questions, to Dr. Sukhjit S. Purewal, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated February 18, 1999, Dr. Purewal provided a history of the October 18, 1996 employment incident and noted appellant's complaints. He found that appellant's right shoulder had full range of motion but that she complained of pain during the final 15 to 20 degrees of abduction, forward flexion and internal rotation. Dr. Purewal stated that his examination revealed normal external rotation, extension and adduction. He also noted that an impingement test was mildly positive.

Dr. Purewal diagnosed mild chronic impingement syndrome of the right shoulder with tenderness and pain during the final stages of motion. He opined that appellant's condition was causally related to the October 18, 1996 employment incident and that she was incapable of performing the requirements of the city letter carrier position. Dr. Purewal further opined that appellant reached maximum medical improvement in August 1997 and that, according to the

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<sup>1</sup> Appellant subsequently obtained a waitress and bartender position at the History Inn.

<sup>2</sup> By decision dated October 30, 1997, the Office denied appellant's compensation claim on the grounds that her reemployment with the employing establishment fairly and reasonably represented her wage-earning capacity.

American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*,<sup>3</sup> she had no permanent impairment.

By letter dated February 26, 1999, the Office requested that Dr. E.C. Hiestand, Board-certified in family practice, provide a comprehensive medical report stating whether he agreed with Dr. Purewal's opinion regarding appellant's condition. The Office provided Dr. Hiestand with a statement of accepted facts and Dr. Purewal's report.

In a report dated March 10, 1999, Dr. Hiestand noted that approximately 18 months had elapsed between appellant's most recent examination of appellant and the date of Dr. Purewal's report. He stated:

"I do find, however, that [Dr. Purewal's] history of the injury and the reported treatments which [appellant] had received correspond accurately with our records and I find that his objective findings also are essentially the same as the findings which we had at her last visit to the Memorial Hospital Occupational Health Clinic."

In a report dated March 8, 1999, the Office medical adviser found that, based upon a thorough review of the medical record including Dr. Purewal's report, appellant sustained a two percent right upper extremity impairment attributed to pain related to her impingement syndrome with rotation cuff tendonopathy. He stated that appellant's physical examination revealed that she had full range of motion and a positive impingement test.

By decision dated March 11, 1999, the Office granted appellant a schedule award for a two percent permanent impairment of her right arm in the amount of \$2,641.08. The period of the award ran for 6.24 weeks from February 18 to April 2, 1999.

By letter dated March 22, 1999, appellant, through her attorney, requested an oral hearing. To support her request, appellant submitted a report in which Dr. Nancy Renneker, Board-certified in physical medicine and rehabilitation, who found that appellant's right shoulder flexion was 150 degrees, abduction 140 degrees, adduction 30 degrees, external rotation 50 degrees and internal rotation 30 degrees. She also noted that appellant had 4/5 right shoulder abduction strength. Dr. Renneker stated:

"According to the A.M.A., [*Guides*], [appellant] has a 19 percent upper extremity impairment due to: (1) decreased active right shoulder range of motion represents an 11 percent right upper extremity impairment[;] and (2) 4/5 right shoulder abduction strength represents an additional 9 percent right upper extremity impairment, for a combined total of 19 percent right upper extremity impairment."

At the oral hearing on July 19, 1999, appellant described her October 18, 1996 employment injury, symptoms and related medical treatment. Appellant alleged that Dr. Purewal examined her for five or ten minutes and never touched her. She described

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<sup>3</sup> A.M.A., *Guides*, (4<sup>th</sup> ed. 1995).

Dr. Renneker's examination and stated that it was approximately one hour in length. Appellant testified that her right shoulder hurt constantly, she could not sleep on her right side and that her right shoulder and arm went numb to her fingers causing her to drop things.

By decision dated December 21, 1999, the Office hearing representative affirmed the Office's March 11, 1999 decision on the grounds that the medical evidence of record was insufficient to modify the Office's prior decision.

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

Section 8123 of the Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>4</sup>

In this case, Dr. Renneker, Board-certified in physical medicine and rehabilitation and appellant's physician, opined that, according to the A.M.A., *Guides*, appellant sustained a 19 percent permanent impairment of the right upper extremity due to decreased range of motion and strength. Dr. Purewal, a Board-certified orthopedic surgeon and the second opinion specialist for the Office, however, opined that appellant showed normal range of motion and no permanent impairment. The Board finds that a conflict exists on the extent of permanent impairment of the right upper extremity. The case, therefore, shall be remanded for referral to an appropriate impartial medical specialist, accompanied by a statement of accepted facts and the complete case record, for a medical opinion addressing this issue. After such further development as deemed necessary, the Office shall issue a *de novo* decision.

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<sup>4</sup> 5 U.S.C. § 8123; see *Shirley L. Steib*, 46 ECAB 309 (1994).

The decision of the Office of Workers' Compensation Programs dated December 21, 1999 is set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC  
July 17, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member