

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHRYN PETTY and U.S. POSTAL SERVICE,
POST OFFICE, Bloomington, IL

*Docket No. 00-1858; Submitted on the Record;
Issued May 16, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to more than a two percent permanent impairment of her right arm for which she received a schedule award.

On January 18, 1996 appellant, then a 46-year-old letter carrier, hurt her right knee and shoulder when she slipped in the mud and fell on her right side. The Office of Workers' Compensation Programs accepted her claim on November 8, 1996 for right rotator cuff tear and repair. Appellant underwent arthroscopy of the right shoulder and was off work from December 17, 1996 to February 26, 1997, when she returned to temporary limited duty.

By letter dated February 6, 1998, the Office asked appellant's attending physician, Dr. Jerald Bratberg, a Board-certified orthopedic surgeon, whether appellant could return to her regular duties. Dr. Bratberg responded that appellant's rotator cuff tear had not properly healed since the surgery and that she required permanent restrictions at work. Based on this report, the Office requested that appellant's employer offer her a permanent limited-duty position within Dr. Bratberg's outlined restrictions.

On September 22, 1998 appellant was referred to Dr. David Fletcher, Board-certified in occupational medicine, for a fitness-for-duty examination and a functional capacity evaluation.

In a October 26, 1998 report, Dr. Fletcher opined that appellant could not do her regular job duties. Her physical restrictions were limited overhead activities and no lifting more than 20 pounds. He indicated that her limitations were permanent and she had reached maximum medical improvement.

On January 12, 1999 appellant filed a claim for a schedule award (Form CA-7) and submitted January 14, 1999 report from Dr. Bratberg.

By letter dated January 27, 1999, the Office requested that Dr. Bratberg assess appellant's degree of permanent impairment.

In a report dated June 21, 1999, Dr. Bratberg found that appellant had full range of motion and a zero percent permanent impairment. He stated:

“She [appellant] has a full range of motion present at this time and from an A.M.A., [American Medical Association] Disability Rating standpoint would have no impairment. However, she does have discomfort and she does have a torn rotator cuff based on her arthrogram of approximately two years ago.”

On August 31, 1999 the Office medical adviser, after reviewing appellant’s medical records, concluded that she was entitled to an award of two percent for Grade 3 pain in her right upper extremity.

By decision dated November 22, 1999, the Office awarded appellant a two percent schedule award for permanent partial impairment of the right upper extremity, running from December 17, 1997 to January 29, 1998.

By letter dated December 21, 1999, appellant requested reconsideration. Appellant submitted a personal statement, contending that she has more than two percent impairment due to her continuing right shoulder pain and because she still has a tear in her rotator cuff as evidenced by a July 1997 arthrogram. Appellant also submitted a medical history report from Dr. Bratberg dated June 2, 1997 to August 2, 1999 and a copy of the right shoulder arthrogram dated July 22, 1997. Duplicate evidence was also submitted.

By letter dated January 14, 2000, the Office referred appellant’s record to a second Office medical adviser to determine whether there was an additional percentage of impairment of the right upper extremity based on the evidence of record and the new evidence submitted. By report dated January 17, 2000, the Office medical adviser found that appellant’s impairment of the right upper extremity was two percent.

By decision dated January 28, 2000, the Office denied modification of the November 22, 1999 decision.¹

The Board finds that appellant is not entitled to greater than a two percent permanent impairment of her right arm for which she received a schedule award.

Under section 8107 of the Federal Employees’ Compensation Act² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. 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 for all claimants the Office adopted the A.M.A., *Guides to the*

¹ The Office’s decision purports to be a nonmerit decision, yet in the decision the Office does weigh the evidence submitted by appellant. The Board will treat this decision as a merit decision.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

*Evaluation of Permanent Impairment*⁴ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

In this case, appellant's attending physician, Dr. Bratberg, declined to rate appellant's impairment for pain and a torn rotator cuff pursuant to the A.M.A., *Guides*. In his report dated August 2, 1999, he indicated that there was still a defect in the rotator cuff even after repair, but also found that appellant had a full range of motion and, pursuant to A.M.A., *Guides* had no permanent impairment.

The Office medical adviser reviewed Dr. Bratberg's June 21, 1999 report and used Table 11 (p. 3/48) and Table 15 (p. 3/54) to find a total of two percent impairment for Grade 3 pain in the suprascapular nerve distribution. He also found that appellant's right shoulder range of motion was normal.

A second Office medical adviser reviewed appellant's record and, on January 17, 2000, agreed there was a two percent impairment of appellant's right upper extremity. He stated that allowance is made for pain in the A.M.A., *Guides*, but no allowance is made for positive arthrograms and no impairment is awarded for strength deficits. He opined that appellant's pain was merely residual following her surgical procedure.

The Board finds that the Office medical adviser properly followed standard procedures for determining the extent of appellant's impairment by using the A.M.A., *Guides* to determine ratings for pain and range of motion. Because the medical evidence establishes a two percent permanent impairment of the right upper extremity and there is no medical evidence to the contrary, the Board finds that the Office properly denied appellant's claim for a greater schedule award.

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989).

The January 28, 2000 and November 22, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 16, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member