

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEISA D. VASSAR-WARNER and U.S. POSTAL SERVICE,
POST OFFICE, Independence, OH

*Docket No. 00-2616; Submitted on the Record;
Issued November 6, 2001*

DECISION and ORDER

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

The issue is whether appellant had more than a 28 percent permanent impairment of the right arm for which she received a schedule award.

This case is on appeal before the Board for the fourth time. In a September 27, 1989 decision, the Board remanded the case for further development of the medical evidence regarding appellant's claim for a schedule award.¹ Next the Board set aside a December 18, 1990 schedule award decision and remanded the case to the Office of Workers' Compensation Programs for further development.² In 1995 the Board affirmed Office decisions dated March 11 and September 20, 1993 denying appellant's claim for a recurrence of disability on August 7, 1992 causally related to her July 19, 1986 employment injury.³ The facts and history of these prior appeals are incorporated by reference.

On July 19, 1986 appellant, then a 27-year-old mail clerk, sustained a right arm strain, impingement syndrome, and a partial tear of the right rotator cuff while in the performance of duty.

By decision dated June 26, 1992, the Office granted appellant a schedule award for 84.24 weeks based upon a 27 percent permanent impairment of the right arm.

By decision dated July 10, 2000, the Office granted appellant an additional schedule award for a one percent permanent impairment of the right arm.⁴

¹ *Leisa D. Vassar*, 40 ECAB 1287 (1989).

² Docket No. 91-1098 (issued February 28, 1992).

³ Docket No. 94-625 (issued September 7, 1995).

⁴ The Board notes that the record contains additional evidence that was not before the Office at the time it issued

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

The schedule award provisions of the Federal Employees' Compensation Act⁵ and its implementing regulation⁶ set forth the number of weeks of compensation payable to employees sustaining impairment from loss, or loss of use, of specified members of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."⁷ This description must be in sufficient detail so that the claims examiner and other reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁸

In a report dated November 3, 1999, Dr. Curtis W. Smith, appellant's attending orthopedic surgeon, provided his findings on examination and diagnosed an impingement syndrome of the right shoulder. He stated that appellant had pain, weakness and discomfort in the shoulder with exertion, particularly with repetitive motions or overhead activities. Dr. Smith stated:

"Examination of the right shoulder revealed active range of motion of forward flexion to 150 [degrees], extension to 30 [degrees], abduction to 130 [degrees], and internal rotation to the level of the buttock....There was a markedly positive impingement test. There was general weakness of the shoulder girdle muscles, essentially, 4/5. There was additionally crepitus on range of motion of the shoulders."

its July 10, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ Federal (FECA) Procedure Manual, Part--2 Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); see *John H. Smith*, 41 ECAB 444, 448 (1990).

⁸ See *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

* * *

“It is my medical opinion that this patient in fact has the permanent effects of her industrial injury sustained on July 19, 1986. It is also my medical opinion that [the] patient has reached maximum medical improvement, essentially one year after surgery, that being January 5, 1999.

“The patient has loss of motion in terms of remaining degrees of active motion as listed above. The patient also [has] marked limitation of function because of decrease in strength as well as motion and pain which restricts her function. This also has been described above.”

Dr. Smith stated that appellant had a 35 percent permanent impairment of the right upper extremity based on the fourth edition of the A.M.A., *Guides*.

The opinion of Dr. Smith is of limited probative value because he failed to explain how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office as appropriate for evaluating schedule losses.⁹ Because Dr. Smith did not explain how he determined that appellant had a 35 percent impairment by reference to specific sections of the A.M.A., *Guides*, the Office medical adviser properly applied the A.M.A., *Guides* to the findings reported by Dr. Smith on examination.¹⁰

In a memorandum dated January 29, 2000, an Office medical adviser determined that appellant had a 28 percent permanent impairment of the right upper extremity. He correctly found that appellant had a 10 percent permanent impairment due to loss of range of motion based on forward flexion of 150 degrees (a 2 percent impairment according to Figure 38 at page 43 of the A.M.A., *Guides*), extension of 30 degrees (a 1 percent impairment according to Figure 38 at page 43), 130 degrees of abduction (a 2 percent impairment according to Figure 41 at page 44), and internal rotation of 0 degrees (a 5 percent impairment according to Figure 44 at page 45).

The Office medical adviser correctly found that appellant had a 9 percent impairment for weakness of the axillary nerve, according to Tables 12 and 15 at pages 49 and 54. He correctly found that appellant had a 12 percent impairment for moderate crepitation of the glenohumeral shoulder joint, according to Tables 18 and 19 at pages 58 and 59. The Office medical consultant combined the percentages of 12, 10 and 9 percent according to the Combined Values Chart at page 322 of the A.M.A., *Guides* and found that appellant had a 28 percent permanent impairment of the right upper extremity.

However, the determination of appellant’s permanent impairment due to her July 19, 1986 employment injury is not complete because the Office failed to determine whether she had

⁹ See *James Kennedy, Jr.*, 40 ECAB 620, 627 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant’s permanent impairment).

¹⁰ See *Lena P. Huntley*, 46 ECAB 643, 646 (1995).

any loss of range of motion due to adduction or external rotation of the shoulder,¹¹ loss of range of motion due to external rotation of the shoulder, or pain or sensory deficit resulting from a peripheral nerve disorder.¹² Upon remand of the case, the Office should further develop the medical evidence by obtaining measurements for appellant's shoulder adduction and external rotation as well as a determination of any right upper extremity impairment due to pain or sensory loss. The Office should then apply these findings to the appropriate sections of the A.M.A., *Guides* and issue an appropriate decision.

The July 10, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
November 6, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹¹ A.M.A., *Guides*, 44, Figure 41; A.M.A., *Guides*, 45, Figure 44.

¹² A.M.A., *Guides*, 47, 48, 54, Tables 10, 11, 15.