

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM E. SLOAN and DEPARTMENT OF AGRICULTURE,
AGRICULTURE RESEARCH SERVICE, Hyattsville, MD

*Docket No. 01-616; Submitted on the Record;
Issued October 3, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to more than a 37 percent impairment to the right upper extremity and a 30 percent impairment to the left upper extremity for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for clavigal radiculitis, right and left shoulder sprains and arthroscopy. Appellant was unable to perform the duties of a plumber due to the impairment of his shoulders and returned to work as a work order control clerk on August 2, 1999. On August 8, 1997 appellant filed a claim for a schedule award.

On June 1, 1998 appellant's treating physician, Dr. Chester A. DiLallo, a Board-certified orthopedic surgeon, stated that appellant had internal rotation on the right of 15 degrees and on the left of 60 degrees, external rotation on the right of 30 degrees and on the left of 60 degrees, retained forward elevation on the right of 80 degrees and on the left of 110 degrees, retained backward elevation on the right and the left of 45 degrees, retained abduction on the right of 30 degrees and on the left of 80 degrees, and retained adduction on the left and right of 15 degrees. He found an impairment of the right upper extremity of 32 percent and of the left upper extremity of 14 percent. Dr. DiLallo added that appellant had an additional impairment of function of the extremity due to weakness, atrophy and pain at 15 percent of each arm. He therefore added 15 percent to his impairment ratings to obtain 47 percent to the right upper extremity and 29 percent to the left upper extremity.

Dr. DiLallo stated that he based his impairment rating on the extent of appellant's shoulder motion, atrophy, pain, loss of function and weakness. He added that appellant reached maximum medical improvement, was unable to work as a plumber and required therapy and analgesics.

In a report dated August 24, 1998, Dr. Eli M. Lippman, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and

reviewed diagnostic tests. He found the forward elevation of the right shoulder was 80 degrees and of the left shoulder 90 degrees, that backward elevation of the right shoulder was 15 degrees and of the left shoulder 25 degrees, abduction of the right shoulder was 80 degrees and of the left shoulder 85 degrees, adduction of the left shoulder was 18 degrees, external rotations of the right and left shoulders were 0 degrees and internal rotation of the right shoulder was 15 degrees and of the left shoulder 20 degrees. Dr. Lippman noted that there was some loss of tone of the left deltoid muscle and some loss of strength in the right biceps and triceps. He stated that he agreed with Dr. DiLallo's conclusions and that his report was in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

On March 21, 2000 the Office medical adviser used the figures Dr. DiLallo obtained for the range of appellant's shoulder motion and degree of pain and applied the A.M.A., *Guides* (4th ed. 1994). Using Figure 44, page 45, he determined that appellant's internal rotation of the right shoulder of 15 degrees equated to a 5 percent impairment and 60 degrees of the left shoulder equated to a 2 degree impairment, and that the external rotation of the right shoulder of 30 degrees equated to a 1 percent impairment and the 60 degrees of the left shoulder equated to a 0 percent impairment. Using Figure 38, page 43, he determined that the forward elevation of the right shoulder of 80 degrees equated to a 7 percent impairment and the 110 degrees of the left shoulder equated to a 5 degree impairment, and that the backward elevation of the right and left shoulders of 45 degrees equated to a 1 percent impairment.

Using Figure 41, page 44, the district medical adviser found that the abduction of 30 degrees of the right shoulder equated to a 7 percent impairment and the 80 degrees of abduction of the left shoulder equated to a 6 percent impairment, and that the adduction of 15 degrees to the right and left shoulders equated to a 1 degree impairment. Using pages 303-314, he determined that appellant had a 15 degree impairment due to pain in both shoulders. Adding the percentages of impairment to the right shoulder, 5, 1, 7, 1, 7, 1, 15, the district medical adviser obtained a total impairment of 37 percent and adding the percentages of impairment to the left shoulder, 2, 0, 5, 1, 6, 1 and 15, he obtained a total impairment of 30 percent.

On April 3, 2000 the Office issued appellant a schedule award for a 37 impairment to the right upper extremity and a 30 percent impairment to the left upper extremity.

By letter dated August 9, 2000, appellant requested reconsideration of the decision and resubmitted Dr. DiLallo's June 1, 1998 report and Dr. Lippman's August 24, 1998 report.

On October 19, 2000 another Office medical adviser used Dr. DiLallo's figures for the right shoulder, and applied Tables 38, 41 and 44 on pages 43-45 of the A.M.A., *Guides* (4th ed. 1994), to obtain a total impairment to the right shoulder of 22 percent.

By decision dated November 6, 2000, the Office denied appellant's request for reconsideration.

The Board finds that appellant has not established that he is entitled to more than the impairment ratings for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office medical adviser properly determined the extent of appellant's shoulder impairment using the A.M.A., *Guides* (4th ed. 1994). Based on the figures he obtained from Dr. DiLallo, he properly determined that appellant had a 37 percent impairment to his right upper extremity and a 30 percent impairment to his left upper extremity. The percentage of impairment he obtained for each degree of range of motion was consistent with Figures 44, 38, and 41 on pages 43-45, and the percentage of pain impairment was consistent with pages 303-314. The district medical adviser's opinion is clear and precise.

While Dr. DiLallo wrote the degree for each range of movement and provided totals of percentage of impairment of 14 percent to the left upper extremity and 32 percent to the right upper extremity, it is not clear how he applied the relevant tables of the A.M.A., *Guides* to obtain these figures. His finding of a 15 percent impairment of pain resulted in a 47 percent impairment to the right upper extremity (32 percent plus 15 percent) and a 29 percent impairment to the left upper extremity (14 percent plus 15 percent).

Dr. Lippman's August 24, 1998 opinion is not probative because he did not assess any impairment rating to appellant's shoulders. The October 19, 2000 medical adviser's opinion that appellant had a 22 percent impairment to his upper right extremity provides a smaller figure than the first medical adviser. Inasmuch as the March 21, 2000 medical adviser's opinion properly conformed with the A.M.A., *Guides*, his opinion constitutes the weight of the evidence.³ Appellant has not shown that he is entitled to more than a 37 percent impairment of the right upper extremity and a 30 percent impairment of the left upper extremity.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ See *Richard F. Kastan*, 48 ECAB 651, 653 (1997).

The November 6 and April 3, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 3, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member