

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YVONNE SANDERS and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

*Docket No. 01-1933; Submitted on the Record;
Issued April 16, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established more than a 14 percent permanent impairment of the right upper extremity and a 16 percent permanent impairment for the left upper extremity.

The Office of Workers' Compensation Programs accepted that appellant sustained bilateral shoulder impingement syndrome due to her work-related duties. The Office subsequently authorized an arthroscopic subacromial decompression for both of appellant's shoulders. By decision dated July 18, 2001, the Office granted appellant a schedule award for a 14 percent permanent loss of use of her right upper extremity and a 16 percent permanent loss of use for her left upper extremity. The period of the award runs from October 27, 2000 through August 13, 2002.

The schedule award provisions 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 function 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*³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (2000).

³ A.M.A., *Guides* (5th ed. 2000).

⁴ *James R. Bradford*, 48 ECAB 320, 324 (1997); *Henry G. Flores, Jr.*, 43 ECAB 901 (1992). The Board notes

In a physical therapy report dated October 26, 2000 and signed by Dr. John W. Nikoleit, a Board-certified orthopedic surgeon and appellant's attending physician, on October 27, 2000 appellant's examination findings for her right shoulder impingement condition were reported. Range of motion findings were noted as: 160 degrees for abduction; 45 degrees for internal rotation; 50 degrees for external rotation; 150 degrees for flexion; and 35 degrees for extension. Appellant's pain level was reported as a 2 or 3 out of 10 and it was noted that appellant was able to perform ADL's with some substitution. She also experienced difficulty with reaching behind head and back.

In a physical therapy report also dated October 26, 2000 and signed by Dr. Nikoleit on October 27, 2000, appellant's examination findings for her left shoulder impingement condition were reported. Range of motion findings were noted as: 115 degrees for abduction; 37 degrees for internal rotation; 30 degrees for external rotation; 128 degrees for flexion; and 50 degrees for extension. The reported pain level was rated a 3 or 4 out of a scale of 10. Difficulty reaching behind neck and back were noted. ADL's were otherwise found within the normal limits.

In a form report dated November 13, 2000, Dr. Nikoleit recommended an impairment rating of 35 percent for appellant's right upper extremity and 40 percent for appellant's left upper extremity. He advised that appellant retained internal rotation of 45 degrees for the right shoulder and 37 degrees for the left shoulder. Retained external rotation was 35 degrees for the right shoulder and 30 degrees for the left shoulder. Retained backward elevation was 35 degrees for the right shoulder and 50 degrees for the left shoulder. 160 degrees in retained abduction was noted for the right shoulder, with 115 degrees for the left shoulder. Adduction was noted to be untested in both shoulders. Dr. Nikoleit further advised that appellant's right shoulder joint was ankylosed at 150 degrees and the left shoulder joint was ankylosed at 128 degrees in forward elevation. A report noting the examination findings of November 13, 2000 was not submitted with the form report.

In a report dated February 26, 2001, an Office medical consultant, Dr. David H. Garelick, an orthopedic surgeon, advised that the A.M.A., *Guides* (4th ed.) was used to estimate appellant's impairment for her right upper extremity.⁵ Dr. Garelick noted that both Dr. Nikoleit's reports and the notations from the physical therapists were reviewed. As appellant continued to complain of intermittent discomfort in the right shoulder, a 2 percent impairment rating was given for a Grade 3 pain in the distribution of the suprascapular nerve.⁶ Physical examination

that, in this case, the Office based its June 6, 2001 decision on the fourth edition of the A.M.A., *Guides*. However, under FECA Bulletin 01-5 (issued January 29, 2001), any new schedule award decision issued after February 1, 2001 must be based on the fifth edition of the A.M.A., *Guides*. A comparison of the fourth and fifth edition of the A.M.A., *Guides* shows that the section for calculating schedule awards for the relevant upper extremity impairments of this case remains unchanged. Therefore, it was harmless error for the Office to use the fourth edition, rather than the fifth edition of the A.M.A., *Guides* to calculate a schedule award in this case.

⁵ As previously noted, the use of the 4th edition of the A.M.A., *Guides* is harmless error in this case as no changes were made in the applicable sections in the 5th edition of the A.M.A., *Guides*.

⁶ A.M.A., *Guides*, Table 15, p. 3/54 and Table 11, p. 3/48 (4th ed. 1993); A.M.A., *Guides*, Table 16-15, p. 492 and Table 16-10, p. 482 (5th ed. 2000).

findings demonstrated a Grade 4/5 strength in the distribution of the suprascapular nerve which equated to a 4 percent permanent impairment.⁷ Utilizing the appropriate figures under the A.M.A., *Guides*, Dr. Garelick found the following impairment ratings for appellant's range of motion: abduction of 160 degrees equated to a 1 percent impairment;⁸ internal rotation of 45 degrees equated to a 3 percent impairment;⁹ external rotation of 50 degrees equated to a 1 percent impairment;¹⁰ flexion of 150 degrees equated to a 2 percent impairment;¹¹ and extension of 35 degrees equated to a 1 percent impairment.¹² The range of motion impairment values totaled 8 percent. This value was combined with the 7¹³ percent impairment values for pain and loss of strength under the Combined Values Chart¹⁴ to equate to a 14 percent permanent impairment of the right upper extremity.

In a report dated March 19, 2001, Dr. Garelick provided an impairment rating of 16 percent for appellant's left upper extremity. Utilizing the same procedure and record notes as noted on his previous report of February 26, 2001, the following values were derived: A 2 percent impairment rating was given for a Grade 3 pain in the distribution of the suprascapular nerve.¹⁵ Physical examination findings demonstrated a Grade 4/5 strength in the distribution of the suprascapular nerve which equated to a 4 percent impairment.¹⁶ Utilizing the appropriate figures under the A.M.A., *Guides*, Dr. Garelick found the following impairment ratings for appellant's range of motion: abduction of 115 degrees equated to a 3 percent impairment;¹⁷ internal rotation of 37 degrees equated to a 3 percent impairment;¹⁸ external rotation of 30

⁷ A.M.A., *Guides*, Table 15, p. 3/54 and Table 12, p. 3/49 (4th ed. 1993); A.M.A., *Guides*, Table 16-15, p. 492 and Table 16-11, p. 484 (5th ed. 2000). The Board notes that a Grade 4/5 strength rating is valued at a 16 percent impairment due to a suprascapular motor deficit and a 25 percent motor deficit under the classification scheme as denoted in the respective tables. Multiplying the two values together (16 percent times 25 percent) equals a 4 percent impairment.

⁸ A.M.A., *Guides*, Figure 41, p. 3/44 (4th ed. 1993); A.M.A., *Guides*, Figure 16-43, p. 472 (5th ed. 2000).

⁹ A.M.A., *Guides*, Figure 44, p. 3/45 (4th ed. 1993); A.M.A., *Guides*, Figure 16-46, p. 479 (5th ed. 2000).

¹⁰ *Id.*

¹¹ A.M.A., *Guides*, Figure 38, p. 3/43 (4th ed. 1993); A.M.A., *Guides*, Figure 16-40, p. 476 (5th ed. 2000).

¹² *Id.*

¹³ Combined Values Chart.

¹⁴ A.M.A., *Guides*, p. 322 (4th ed. 1993); A.M.A., *Guides*, p. 604 (5th ed. 2000).

¹⁵ *See supra* note 6. The Board notes that a Grade 3 pain is valued at a 5 percent impairment due to sensory deficit or pain as a result of the suprascapular nerve and a 60 percent sensory deficit under the classification scheme as denoted in the respective tables. Multiplying the two values together (5 percent times 60 percent) equals a 3 percent impairment versus the 2 percent impairment found. This miscalculation, however, is harmless error as the total impairment value of 16 percent for the left upper extremity remains the same.

¹⁶ *See supra* note 7.

¹⁷ *See supra* note 8.

¹⁸ *See supra* note 9.

degrees equated to a 1 percent impairment;¹⁹ flexion of 128 degrees equated to a 3 percent impairment;²⁰ and extension of 50 degrees equated to a 0 percent impairment²¹. The range of motion impairment values totaled 10 percent. This value was combined with the 7 percent impairment values for pain and loss of strength under the Combined Values Chart²² to equate to a 16 percent permanent impairment of the left upper extremity.

The Board notes that Dr. Garelick properly excluded Dr. Nikoleit's November 13, 2000 report, which contained an opinion that appellant's left and right joints were ankylosed, in calculating appellant's permanent partial impairment to her upper extremities.²³ Although Dr. Nikoleit advised that appellant's right joint was ankylosed at 150 degrees in forward elevation and her left joint was ankylosed at 128 degrees in forward elevation, Dr. Nikoleit does not support his findings regarding ankylosis or the range of motion findings on examination findings. Accordingly, Dr. Garelick properly excluded Dr. Nikoleit's November 13, 2000 report in calculating appellant's permanent partial impairment to her upper extremities.

The Board finds that the reports of the Office medical adviser, Dr. Garelick, are based on an appropriate use of the A.M.A., *Guides* and represents the weight of the evidence. Thus, appellant has not established that she is entitled to a schedule award for more than the 14 percent impairment already awarded for the right upper extremity and the 16 percent impairment already awarded for the left upper extremity.

¹⁹ *Id.*

²⁰ *See supra* note 11.

²¹ *Id.*

²² *See supra* note 13.

²³ *See* A.M.A., *Guides*, "Determining Impairment Due to Abnormal Shoulder Motion" p. 479 (5th ed. 2000).

The decision of the Office of Workers' Compensation Program dated July 18, 2001 is hereby affirmed.

Dated, Washington, DC
April 16, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member