

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULA S. WALLACE and U.S. POSTAL SERVICE
MAIN POST OFFICE, Dayton, OH

*Docket No. 02-764; Submitted on the Record;
Issued December 16, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than an eight percent permanent impairment of the right upper extremity and more than a six percent impairment of the left.

On March 26, 1998 appellant, then a 36-year-old clerk, filed an occupational disease claim alleging that her bilateral shoulder condition was caused by performance of her job duties. The Office of Workers' Compensation Programs accepted appellant's claim for a bilateral rotator cuff tendinitis, bilateral trapezius strain, bilateral rotator cuff impingement, partial tear of the right rotator cuff with arthroscopy and acroplasty of the right shoulder performed on February 16, 1999. The claim was expanded to include left shoulder impingement syndrome, with arthroscopy and decompression of the left shoulder performed on July 6, 1999.¹

By letter dated December 21, 1999, the Office advised appellant that she may be entitled to a schedule award. She was advised to have her physician provide a report to determine the extent of any permanent impairment as a result of the accepted work-related injury.

In a report dated February 18, 2000, Dr. Rudolf Hofmann, an orthopedist, provided the results of his physical examination of the right and left shoulders and noted that appellant had surgery to the right and left shoulders. He indicated that she had a nine percent impairment to both the right and left upper extremities and referred to Figures 38, 41 and 44 of the 4th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

Appellant filed a notice of recurrence on February 10, 2000.

In a March 15, 2000 report, Dr. Donald Ames, a Board-certified orthopedic surgeon, indicated that appellant's work restrictions had changed in order to get her back to work in some

¹ Appellant filed a notice of recurrence on February 3 and June 11, 1999.

capacity. He noted that her restrictions remained at no lifting over 20 pounds and that she was at maximum medical improvement.

In a report dated March 16, 2000, the Office medical adviser reviewed Dr. Hofmann's February 18, 2000 report and stated that appellant had an eight percent impairment of the right upper extremity and a six percent impairment of the left upper extremity in accordance with the A.M.A., *Guides*. He derived these results by reviewing page 43, Figure 38 and finding that range of motion in the right shoulder with flexion of 125 degrees correlated to a 4 percent impairment and extension with 55 degree correlated to a 0 percent impairment. Dr. Hofmann found that page 44, Table 41 revealed that abduction of 125 degrees correlated to a 3 percent impairment and adduction of 40 degrees correlated to a 0 percent impairment. He referred to page 45, Table 44 and found that external rotation of 50 degrees correlated to one percent impairment and internal rotation of 90 degrees correlated to a 0 percent impairment. For the left shoulder he found that reviewing page 43, Figure 38 and finding that range of motion in the right shoulder with flexion of 140 degrees correlated to a 3 percent impairment and extension with 70 degree correlated to a 0 percent impairment. Dr. Hofmann found that page 44, Table 41 revealed that abduction of 135 degrees correlated to a 2 percent impairment and adduction of 55 degrees correlated to a 0 percent impairment. He referred to page 45, Table 44 and found that external rotation of 35 degrees correlated to one percent impairment and internal rotation of 90 degrees correlated to a 0 percent impairment. Dr. Hofmann found that the date of maximum medical improvement was February 18, 2000.

By decision dated April 10, 2000, the Office granted appellant a schedule award for an eight percent permanent impairment for her right upper extremity and a six percent permanent impairment to the left upper extremity. The award covered a period of 43.68 weeks from February 18 to December 20, 2000.

By letter dated April 22, 2000, appellant requested a hearing, which was held on October 25, 2000.²

In a report dated December 4, 2000, Dr. Ames indicated that appellant was offered a new job and was going to be working as a window clerk. He stated that it was reasonable for her to have accommodations of no lifting over 20 pounds and to do that type of work. Dr. Ames indicated that appellant had good motion in her shoulders and had only mild signs of impingement.

In a January 30, 2001 decision, the hearing representative affirmed the April 10, 2000 decision finding that appellant had no more than an eight percent impairment of the right upper extremity and a six percent permanent impairment of the left upper extremity.

In an April 30, 2001 report, Dr. Martin Fritzhand, a Board-certified urologist, noted appellant's history of injury and treatment. He indicated that flexion of the shoulders was diminished to 150 degrees on the left and 170 degrees on the right, with abduction normal to 180 degrees bilaterally. Dr. Fritzhand indicated that extension was normal to 50 degrees on the right

² Her representative also requested a hearing on May 1, 2000.

and diminished to 30 degrees on the left, with adduction normal to 50 degrees bilaterally. Further, he found that internal rotation of the shoulders was diminished to 70 degrees on the left and 50 degrees on the right, with external rotation normal to 90 degrees bilaterally. Dr. Fritzhand found that the right shoulder sat about two inches lower than the left shoulder and that there was tenderness noted on palpation of the anterior aspect of the left shoulder as well as tenderness on palpation of the right trapezius. He found that muscle strength was graded at 4+/5 over the shoulder abductors and rotators bilaterally, the biceps were 12 1/4 inches each 10 centimeters above the antecubital fossa, while the left forearm was a 1/2 inch smaller (9 3/4 inches) than the right forearm 10 centimeters below the antecubital fossa and sensory modalities were intact. Dr. Fritzhand noted that on physical examination, range of motion of the shoulders was significantly reduced, muscle strength was diminished over the shoulder abductors and rotators bilaterally and there was some atrophy noted over the left forearm. He indicated that the A.M.A., *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) were consulted in arriving at the cited level of impairment. Dr. Fritzhand noted referring to Figures 37, 38, 40, 41, 43 and 44 and Tables 10, 11A, 12A, 15 and 27. He opined that appellant sustained a permanent impairment to the upper extremities of 48 percent.

By letter dated October 5, 2001, appellant requested reconsideration.³

In reports dating from June 5 to November 12, 2001, Dr. Ames indicated that appellant's right arm shoulder and right arm elbow were sore with some tenderness at the lateral epicondyle area and pain with resisted dorsiflexion of the wrist, consistent with lateral epicondylitis at the right elbow, which is recurrent for appellant. He noted that appellant had injections in the past, which helped her somewhat. Dr. Ames determined that appellant had chronic subacromial impingement at both shoulders treated with arthroscopic debridement, but she had a recurrence aggravated by her work. He noted that appellant continued to work for the employing establishment and tried to modify her activities at work, but continues to experience irritative types of problems. Dr. Ames indicated that they discussed the possibility of retraining for a job not requiring the use of the upper extremities and that her prognosis was certainly guarded for complete improvement for these problems, as they were so chronic in nature. He noted that x-rays of the shoulder did not show any regrowth of spurs on the underside of the acromion and appellant appeared to have a nicely decompressed area of the rotator cuff with normal glenohumeral joint and the AC joint looked normal. His diagnosis was chronic impingement syndrome of both shoulders.

In a decision dated January 15, 2002, the Office denied modification of its prior decision on the grounds that the evidence submitted was insufficient to justify modification of the previous decision.

The Board finds that appellant has no more than an eight percent permanent impairment of the right upper extremity or more than a six percent impairment of the left.

³ On November 13, 2001 appellant's representative also requested reconsideration. He also noted that reconsideration was not the proper procedure, however, he was requesting it nonetheless.

The schedule award provisions of the Act⁴ and its implementing regulation⁵ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 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 upper extremity impairment using the A.M.A., *Guides* (4th ed. 1993).⁶ The Office medical adviser's opinion is clear and precise. He derived these results by explaining that he reviewed page 43, Figure 38 and found that range of motion in the right shoulder with flexion of 125 degrees correlated to a 4 percent impairment and extension with 55 degrees correlated to a 0 percent impairment. The Office medical adviser found that page 44, Table 41 revealed that abduction of 125 degrees correlated to a 3 percent impairment and adduction of 40 degrees correlated to a 0 percent impairment. He referred to page 45, Table 44 and found that external rotation of 50 degrees correlated to 1 percent impairment and internal rotation of 90 degrees correlated to a 0 percent impairment. For the left shoulder the medical adviser found that reviewing page 43, Figure 38 and finding that range of motion in the right shoulder with flexion of 140 degrees correlated to a 3 percent impairment and extension with 70 degrees correlated to a 0 percent impairment. He found that page 44, Table 41 revealed that abduction of 135 degrees correlated to a 2 percent impairment and adduction of 55 degrees correlated to a 0 percent impairment. The medical adviser referred to page 45, Table 44 and found that external rotation of 35 degrees correlated to 1 percent impairment and internal rotation of 90 degrees correlated to a 0 percent impairment. Based on the figures that were obtained from Dr. Hoffman, the Office medical adviser added the percentages for each extremity and properly determined that appellant had an eight percent impairment to the right upper extremity and a six percent impairment to her left upper extremity.

Subsequent to the Office's January 30, 2001 decision, appellant submitted a new report from Dr. Fritzhand, who indicated that he had 48 percent impairment to the upper extremities based on the fourth edition of the A.M.A., *Guides*. Although he referred to certain tables and pages, as a whole, he did not refer to the specific tables or pages to explain how he derived his percentages or formatted his percentage rating. Therefore, his opinion is insufficient to show that appellant was entitled to an additional impairment.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards. FECA Bulletin No. 01-05 (issued January 29, 2001).

Inasmuch as the Office medical adviser's opinion properly conformed with the A.M.A., *Guides* his opinion constitutes the weight of the evidence.⁷ Appellant has not shown that she is entitled to more than an eight percent impairment of the right upper extremity or a six percent impairment of the left upper extremity.

The Board notes that appellant submitted additional reports from Dr. Ames, however, he did not provide an impairment rating and these subsequent reports are of limited probative value.

The January 15, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 16, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Richard F. Kastan*, 48 ECAB 651, 653 (1997).