

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TINA M. SCRAFFORD and U.S. POSTAL SERVICE,  
POST OFFICE, Frazer, PA

*Docket No. 02-1928; Submitted on the Record;  
Issued December 24, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
MICHAEL E. GROOM

The issue is whether appellant has more than a 13 percent permanent impairment of her right upper extremity, for which she received a schedule award.

Appellant's claim, filed on January 11, 1999 after she hurt her right shoulder while loading mail on January 9, 1999, was accepted for adhesive capsulitis and tendinitis. Appellant returned to limited duty and underwent physical therapy and epidural injections.

On June 4, 1999 appellant had an arthroscopic acromioplasty on her right shoulder, performed by Dr. Lewis S. Sharps, a Board-certified orthopedic surgeon and her treating physician. On July 13, 1999 Dr. Sharps released appellant to full duty, effective August 23, 1999.

Appellant requested a schedule award, and submitted a May 26, 2000 report from Dr. David Weiss, an osteopathic practitioner in orthopedic medicine, who found a 26 percent permanent impairment of appellant's right upper extremity. The Office of Workers' Compensation Programs' medical adviser reviewed Dr. Weiss' findings and determined that appellant had a 13 percent impairment.

On December 8, 2000 the Office issued a schedule award for a 13 percent impairment of appellant's right upper extremity. The award ran from May 18, 2000 to February 15, 2001. Appellant disagreed with the impairment rating and requested a hearing, which was held on May 15, 2001.

On July 26, 2001 the hearing representative affirmed that appellant had a 13 percent impairment of her right upper extremity. She noted that the Office medical adviser stated that Dr. Weiss mistakenly calculated a rating for a complete arthroplasty, rather than for the acromioplasty of the acromioclavicular (AC) joint, which appellant had undergone.

The Board finds that this case is not in posture for decision due to a conflict in the medical opinion evidence.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.<sup>2</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>3</sup> The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.<sup>4</sup>

Appellant reached maximum medical improvement on February 29, 2000, according to her treating physician, Dr. Sharps. The Office referred appellant to Dr. Randall N. Smith, a Board-certified orthopedic surgeon, who examined her on September 27, 1999 and stated that the work injury resulted in tendinitis and impingement, which aggravated an underlying degenerative problem. Appellant's arthroscopic surgery revealed abnormal findings, including marked hypertrophy of the subacromial bursa, a large overhang of the acromium's anterior lip and fraying of the rotator cuff. Dr. Smith stated that a 50 percent acromioplasty was performed on June 4, 1999. He added that appellant had loss of mobility and strength in her right shoulder.

The June 4, 1999 operative report described the removal of appellant's periosteum by bipolar cautery, removal of the subacromial bursa with a synovial resector, and reduction of half the thickness of the acromium using a burr. The coracoacromial ligament was transected and the AC joint appeared to be intact. No full thickness tears of the rotator cuff were found, just fraying. The arthroscopy showed no degenerative disease of the shoulder joint, and intact biceps tendon, labrum and rotator cuff.

In his May 26, 2000 report, Dr. Weiss reviewed appellant's treatment history and provided range of motion measurement figures for appellant's right shoulder: forward elevation of 140/180 degrees, abduction of 170/180 degrees, cross-over/adduction to 75/75degrees, external rotation to 90/90 degrees and internal rotation normal to T6. Using Table 27, page 61 of the fourth edition of the A.M.A., *Guides*, Dr. Weiss found a 24 percent impairment for the right shoulder arthroplasty and a 3 percent impairment of flexion, based on Figure 38, page 43. Applying the Combined Values Chart, that resulted in a 26 percent impairment.

The Office medical adviser reviewed Dr. Weiss' report and concluded that he had used the resection arthroplasty for the entire shoulder rather than the value for acromioplasty of the distal AC joint. The 10 percent rating combined with the 3 percent impairment due to range of motion resulted in a 13 percent impairment.

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<sup>1</sup> 5 U.S.C. §§ 8101-8109.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

The Office medical adviser and Dr. Weiss disagree on the nature of the surgery done on appellant's shoulder. Dr. Sharps' report does not mention the distal clavicle, upon which the Office medical adviser based his 10 percent rating. The report indicates that more than just appellant's AC joint was involved in the surgery. As the medical evidence is unclear on the extent of appellant's arthroplasty and the reviewing physicians disagree on the degree of impairment, the Board will remand this case to the Office to resolve the conflict. After such development of the evidence as the Office deems necessary, a *de novo* decision shall be issued.

The July 26, 2001 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC  
December 24, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member