U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN M. BAUER and DEPARTMENT OF AGRICULTURE, FOOD SAFETY & INSPECTION SERVICE, Norma, NJ

Docket No. 02-2061; Submitted on the Record;
Issued December 27, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether appellant sustained more than a 14 percent permanent impairment of the left shoulder, for which she received a schedule award.

The case was before the Board on a prior appeal. In a decision dated June 4, 2001, the Board determined that a conflict in the medical evidence existed as to the degree of permanent impairment to the left arm. Appellant had received a schedule award for a nine percent impairment to the left arm by the Office of Workers' Compensation Programs' decision dated April 27, 1999. The Board remanded the case for resolution of the conflict pursuant to 5 U.S.C. § 8123(a). The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

The Office referred appellant, medical records and a statement of accepted facts, to Dr. William Rix, a Board-certified orthopedic surgeon. In a report dated August 17, 2001, Dr. Rix provided a history and results on examination. He opined that appellant had a 14 percent permanent impairment to the left leg under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th edition). In a report dated September 4, 2001, an Office medical adviser also opined that appellant had a 14 percent permanent impairment to the left arm.

By decision dated September 19, 2001, the Office issued a schedule award for a 14 percent permanent impairment to the left arm (less the 9 percent previously awarded). In a decision dated May 7, 2002, an Office hearing representative affirmed the schedule award.

The Board finds that the record does not establish that appellant has more than a 14 percent permanent impairment to her left arm.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member

or function.[1] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[2]

In this case, there was a conflict in the evidence between an attending osteopath, Dr. David Weiss, and an Office medical adviser, with respect to the degree of left arm permanent impairment. Dr. Weiss opined that appellant had a 38 percent impairment, while the Office medical adviser found a 9 percent impairment. The Board notes that the reports of Dr. Weiss and the Office medical adviser were based on the fourth edition of the A.M.A., *Guides.* As of February 1, 2001, however, the fifth edition was to be used for any recalculation of a previous award.[3]

The impartial medical specialist, Dr. Rix, opined that under the fifth edition appellant had a 14 percent impairment to the left arm, based on section 16.4i for shoulder motion impairment.[4] As noted by the Office medical adviser in a September 4, 2001 report, applying the range of motions results recorded by Dr. Rix to the appropriate figures for shoulder motion results in the following impairments: three percent for loss of flexion and one percent for loss of extension under Figure 16-40, four percent for loss of abduction under Figure 16-43 and three percent for loss of internal rotation under Figure 16-46.[5] The medical adviser then identified Table 16-15, which provides the maximum impairments for sensory or motor deficits of major peripheral nerves, and found that the maximum for shoulder pain is five percent.[6] The medical adviser graded the impairment at 60 percent of the maximum, in accord with the procedure described at Table 16-10, for a 3 percent impairment for pain.[7] Combining the 11 percent for loss of motion with 3 percent for pain, the medical adviser concurred with Dr. Rix that appellant had a 14 percent permanent impairment.

Appellant argues that Dr. Rix's report is deficient in that (1) he does not properly measure and rate grip strength, (2) does not account for shoulder crepitus, and (3) does not discuss appellant's shoulder surgery. With respect to grip strength, Dr. Rix does note grip strength in his physical findings. His failure to specifically calculate a grip strength impairment is consistent with the A.M.A., *Guides,* which do not emphasize grip strength in impairment

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[1] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[2] *A. George Lampo*, 45 ECAB 441 (1994).

[3] FECA Bulletin No. 01-05 (January 29, 2001).

[4] Appellant argues that there is no section 16.4i, but the A.M.A., *Guides* at page 474 identify section 16.4i for shoulder motion impairments and includes Figure 16-40 for flexion and extension, Figure 16-43 for adduction/adduction and Figure 16-46 for external/internal rotation.

[5] A.M.A., *Guides* (5th edition 2001), 476-79.

[6] *Id.* at 492, Table 16-15.

[7] *Id.* at 482, Table 16-10.

ratings.[8] As to crepitus, the fourth edition did provide for impairments from joint crepitation (Table 19), but the fifth edition states that "joint crepitation is not rated separately."[9] Dr. Rix found mild crepitus in both shoulders, and he stated that there was no evidence of shoulder instability. The Board finds no indication that Dr. Rix failed to properly apply the fifth edition with regard to crepitus.

As the Board noted in the prior appeal, the issue of whether appellant's prior shoulder surgery resulted in a ratable impairment was an issue to be resolved by the impartial medical specialist. Table 16-27 provides an impairment rating for resection arthroplasty of the shoulder.[10] Dr. Weiss had applied an impairment for resection arthroplasty of the total shoulder under Table 27 of the 4th edition, whereas an Office medical adviser opined that appellant's June 2, 1997 arthroscopic debridement surgery was not an arthroplasty of the shoulder. Dr. Rix clearly stated that he did not consider the surgical procedure to be an arthroplasty of the shoulder; therefore, Table 16-27 would not be applicable in this case.

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[11] The Board finds that the weight of the medical evidence in this case does not establish more than a 14 percent permanent impairment to the left arm.

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[8] *See Id.* at 507-08, which states that because strength measurements are functional tests that are difficult to control, and the A.M.A., *Guides* are for the most part based on anatomic impairment, the A.M.A., *Guides* do not assign a large role to strength measurements. Only in "a rare case" would loss of grip strength represent an impairing factor not adequately considered by other methods.

[9] *Id.* at 499.

[10] *Id.* at 506.

[11] *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

The decisions of the Office of Workers' Compensation Programs dated May 7, 2002 and September 19, 2001 are affirmed.

Dated, Washington, DC
December 27, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member