

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of CORLIS G. SMITH and DEPARTMENT OF THE NAVY,  
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 00-1347 Submitted on the Record;  
Issued January 9, 2002*

---

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has greater than a 10 percent permanent impairment of her right upper extremity, causally related to her employment injury.

On April 15, 1988 appellant, then a 35-year-old machinist, filed a claim alleging that on February 11, 1988 she sustained right shoulder muscle strain while pushing upon a bar attempting to loosen bolts. Appellant's claim was accepted for a right trapezius strain and appellant underwent surgery on June 9, 1988 and an acromioplasty on August 2, 1988.

On April 26, 1999 the Office of Workers' Compensation Programs granted appellant a schedule award for a 10 percent permanent impairment of her right upper extremity based upon a November 4, 1998 second opinion report from Dr. Michael Sternlieb, a Board-certified orthopedic surgeon<sup>1</sup> and the April 8, 1999 report of the Office medical adviser. The period of the award was from April 25 to November 29, 1999 for a period of 31.20 weeks of compensation.

By letter dated May 17, 1999, appellant requested an oral hearing before a hearing representative on whether she was entitled to a greater schedule award.

A hearing was held on August 16, 1999 at which appellant testified that two of her doctors had rated her at 15 and 20 percent respectively for permanent impairment.

On September 13, 1999 the Office received a brief letter from Dr. Arthur Wardell, a Board-certified orthopedic surgeon, which noted that Cybex testing results suggested that appellant had a 30 percent permanent impairment of her right upper extremity due to motion

---

<sup>1</sup> Further information was requested from Dr. Sternlieb, but he had passed away at some point preceding April 15, 1999.

limitation and weakness. An August 12, 1999 notation from Dr. Jeffrey J. Albert, a Board-certified orthopedist, was enclosed, which merely stated that he had received preverification authorizing her visit.

The hearing representative found that the Cybex testing conducted by Dr. Wardell, who indicated a 30 percent permanent impairment, made no correlation to the A.M.A., *Guides*, failed to show how such measurements were utilized in calculating appellant's 30 percent right upper extremity impairment and failed to provide medical rationale for apparent decrease in shoulder strength. Further, the Office medical adviser utilized the measurements obtained by Dr. Wardell and on October 13, 1999 he calculated that appellant had a 10 percent impairment of the right upper extremity. The hearing representative noted that appellant's treating physician did not provide an impairment estimate related to the A.M.A., *Guides* and provided an explanation how a 30 percent impairment was reached, such that the findings and calculations of Dr. Neven A. Popovic, a Board-certified orthopedic surgeon and Office medical adviser, constituted the weight of the medical opinion evidence.

By decision dated November 19, 1999, the hearing representative affirmed the April 26, 1999 award finding that the medical evidence of record failed to reflect that appellant had any impairment greater than 10 percent of the right upper extremity.

The Board finds that appellant has no greater than a 10 percent permanent impairment of her right upper extremity, causally related to her employment injury.

The schedule award provision of the Act<sup>2</sup> and its implementing regulations<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of schedule 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 be may 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.

Although the standards for evaluating the permanent impairment of an extremity under the A.M.A., *Guides* are based primarily on loss of range of motion, all factors that prevent a limb from functioning normally, including pain and loss of strength, should be considered, together with loss of motion, in evaluating the degree of permanent impairment.<sup>4</sup> Chapter 3.1h of the A.M.A., *Guides* provides a grading scheme and procedure for determining<sup>5</sup> impairment of the upper extremity due to pain, discomfort, loss of sensation or loss of strength.<sup>5</sup>

---

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> See *Paul A. Toms*, 28 ECAB 403 (1987).

<sup>5</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Tables 10 & 11, p. 42 (4<sup>th</sup> ed. 1993).

In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.<sup>6</sup>

Dr. Wardell reported a greater permanent impairment of the right upper extremity based upon Cybex testing results. Board precedent is well settled, however, that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based upon the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>7</sup> Board cases are clear that, if the attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment.<sup>8</sup>

Dr. Wardell did not indicate that he applied the A.M.A., *Guides* in any way in assessing appellant's permanent impairment due to acromioplasty at 10 percent. He simply stated in two reports that appellant had a 10 percent permanent impairment of the right upper extremity secondary to her acromioplasty as demonstrated by Cybex testing. Accordingly, those reports are of diminished probative value. Dr. Popovic, an Office medical adviser, relied on Dr. Wardell's measurements and findings to assess the permanent impairment of appellant's right upper extremity and properly applied the A.M.A., *Guides* to those findings to calculate a 10 percent permanent impairment. Therefore, these findings were of great probative value. The statement from Dr. Albert was properly found to be of no probative value as it did not address the issue in question.

Consequently, the weight of the medical evidence of record supports that appellant has no greater than a 10 percent permanent impairment of her right upper extremity, causally related to her right shoulder injuries.

---

<sup>6</sup> *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

<sup>7</sup> See *Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

<sup>8</sup> See *Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Raymond Montanez*, 31 ECAB 1475 (1980).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 19 and April 26, 1999 are hereby affirmed.

Dated, Washington, DC  
January 9, 2002

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member