

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAMAR NEWTON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Lyons, NJ

*Docket No. 02-251; Submitted on the Record;
Issued June 24, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 16 percent permanent impairment of the right upper extremity, for which he received a schedule award.

On August 27, 1993 appellant, then a 44-year-old truck driver, injured his right shoulder while pushing a food cart. The Office of Workers' Compensation Programs accepted his claim for right shoulder sprain and anterior impingement syndrome. Appellant underwent arthroscopic decompression on January 11, 1994. He received compensation benefits.

On August 25, 2000 appellant claimed a schedule award. In support thereof, he submitted a June 23, 2000 report from Dr. David Weiss, a Board-certified orthopedic surgeon,¹ who related appellant's history, complaints and findings on physical examination, which included the following:

“Examination of the right shoulder revealed well[-]healed portal arthroscopy scars. There is no pericapsular tenderness. The Hawkin's impingement sign is positive. There is focal acromioclavicular tenderness noted. There is crepittance noted. Range of motion revealed forward elevation of 160/180 degrees, abduction of 140/180 degrees, cross over adduction of 75/75 degrees, external rotation of 90/90 degrees. Posterior reach (internal rotation) was to T8 on the right versus T6 on the left. Muscle strength testing revealed a grade of 4/5 involving the supraspinatus muscle. The deltoid musculature is graded 4/5. The biceps and triceps musculature is graded 5/5. The Yergason's sign is negative. There is no bicipital groove tenderness noted.

“The upper arm circumferential measurements reveal 35 cm bilaterally. The lower arm circumferential measurements reveal 32 cm bilaterally.”

¹ Dr. Weiss did not perform the January 11, 1994 surgery.

Dr. Weiss diagnosed post-traumatic acromioclavicular arthropathy with impingement and status post arthroscopy with decompression and release of the coracoacromial ligament. Citing tables and pages from the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), Dr. Weiss determined that appellant had a 36 percent permanent impairment of the right upper extremity as a result of his August 27, 1993 employment injury. He determined that appellant had a 24 percent impairment due to arthroplasty, a 1 percent impairment due to lack of flexion, a 2 percent impairment due to lack of abduction, a 4 percent impairment due to weakness of the supraspinatus muscle and a 9 percent impairment due to weakness of the deltoid.

On September 14, 2000 an Office medical adviser reviewed Dr. Weiss' findings and determined that appellant had a 16 percent permanent impairment of the right upper extremity. Citing tables and pages from the A.M.A., *Guides*, the medical adviser determined that appellant had a 6 percent impairment due to arthroscopic debridement, a 1 percent impairment due to lack of forward elevation, a 2 percent impairment due to lack of abduction and a 7 percent impairment due to 4/5 weakness of the deltoid and supraspinatus muscles.

On January 3, 2001 the Office issued a schedule award for a 16 percent permanent impairment of the right upper extremity.

The Board finds that there is a conflict in medical opinion necessitating referral to a impartial medical specialist pursuant to 5 U.S.C. § 8123(a).

Appellant's orthopedic surgeon, Dr. Weiss, determined that appellant had a 24 percent impairment due to arthroplasty, citing Table 27, page 61, of the A.M.A., *Guides*. Under this table, a total shoulder resection arthroplasty represents a 24 percent impairment of the upper extremity. The Office medical adviser disagreed. He noted that the operative surgeon did not do a total shoulder resection arthroplasty. Instead, citing the same table and page as Dr. Weiss, the medical adviser reported that the level of arthroplasty more closely describing appellant's procedure was "distal clavicle resection," which represents a 10 percent impairment of the upper extremity.²

There is disagreement between appellant's physician and the Office medical adviser on which level of arthroplasty in the A.M.A., *Guides* more closely describes the procedure appellant underwent on January 11, 1994. Based on this conflict a referral to an impartial medical specialist is warranted.

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."³

² It appears that the medical adviser then multiplied this percentage by the joint value relative to the upper extremity, perhaps using Table 18, page 58. Because joint values relative to the upper extremity are already incorporated into Table 27, page 61, no additional calculation is needed.

³ 5 U.S.C. § 8123(a).

To resolve the conflict between Dr. Weiss and the Office medical adviser, the Office should refer the medical record and a statement of accepted facts to an appropriate impartial medical specialist, who should explain which level of arthroplasty in Table 16-27, page 506, of the A.M.A., *Guides* (5th ed. 2001) most accurately describes the procedure that was performed on January 11, 1994.⁴

The A.M.A., *Guides* provides that in the presence of decreased motion, motion impairments are derived separately and combined with arthroplasty impairment. If the same joint presents other findings, however, the rules outlined on page 499 must be followed to avoid duplication of impairments.⁵ The impartial medical specialist should explain whether Dr. Weiss' findings of weakness in the supraspinatus and deltoid muscles can be combined with impairments for arthroplasty and decreased motion without duplication of impairments. The A.M.A., *Guides* cautions that the evaluator must have a good understanding of the pathomechanics of deformities and apply proper judgment to avoid duplication of impairment ratings.⁶ After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for a schedule award.

The January 3, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
June 24, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ Any recalculations of previous awards that result from hearings, reconsideration or appeals should be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001. FECA Bulletin 01-05 (issued January 29, 2001).

⁵ A.M.A., *Guides* 505 (5th ed. 2001).

⁶ *Id.* at 499.