

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID COHEN and GOVERNMENT PRINTING OFFICE,
Washington, DC

*Docket No. 01-1439; Submitted on the Record;
Issued March 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to more than a 39 percent permanent impairment of the left upper extremity, for which he received a schedule award.

On May 19, 1998 appellant, then a 61-year-old proofreader, filed a traumatic injury claim alleging that on that date he hurt his left hand, left shoulder and the left side of his neck while holding the door open for someone who was trying to get a mail cart through the door. Appellant stated that he thought his hand got caught in the door by the cart.

By letter dated September 4, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for left arm contusion and aggravation of cervical spondylosis at C6-7 and cervical myelopathy.

On June 7, 1999 appellant filed a claim for a schedule award.¹ In a June 22, 1999 letter, the Office requested that appellant submit medical evidence regarding the extent of his permanent impairment based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and the causal relationship between his impairment and employment injury.

In response, appellant submitted a July 15, 1999 report of Dr. Marcia D. Wolf, a Board-certified physiatrist and his treating physician, who noted that testing of the left shoulder revealed left grip strength that was decreased by 60 percent compared to the right and 4/5 shoulder muscle weakness. Additional testing revealed 135 degrees of flexion, which constituted a 3 percent impairment; 60 percent of extension which constituted a 0 percent impairment; 25 degrees of adduction which constituted a 1 percent impairment; 125 degrees of abduction which constituted a 3 percent impairment; full internal rotation which constituted a 0 percent impairment; and 55 degrees of external rotation which constituted a 1 percent impairment. She

¹ The record reveals that appellant retired from the employing establishment in August 1999.

stated that shoulder flexion weakness constituted a 7 percent impairment to the upper extremity, internal and external rotation weakness constituted a 9 percent impairment to the upper extremity and abduction and adduction weakness constituted a 2 percent impairment of the upper extremity. Dr. Wolf added 3 percent, 4 percent and 1 percent totaling 8 percent. She determined that appellant had a 26 percent impairment by adding 8 percent, 7 percent, 9 percent and 2 percent. Using the Combined Values Chart on page 322 of the A.M.A., *Guides*, Dr. Wolf determined that 26 combined with 15 was 37 and 37 combined with 6 was a 41 percent permanent impairment of the right upper extremity.²

On July 31, 2000 an Office medical adviser noted that Dr. Wolf's findings on physical examination applied her left shoulder range of motion values for flexion, extension, adduction, abduction, internal and external rotation and Dr. Wolf findings regarding grip strength and shoulder muscle weakness to the tables in the fourth edition of the A.M.A., *Guides*. Regarding range of motion, the Office medical adviser calculated the same impairment ratings as found by Dr. Wolf. The Office medical adviser noted a second external rotation finding of 40 degrees and determined that it constituted a 1 percent impairment. Further, the Office medical adviser determined that appellant's grip strength deficit of 60 percent constituted a 20 percent impairment based on Table 34, page 65. Finally, the Office medical adviser determined that appellant's 4/5 shoulder muscle weakness constituted a 10 percent impairment based on Table 10, page 47. He concluded that, based on the test results, appellant had a 39 percent permanent impairment of the left upper extremity.

By decision dated March 8, 2001, the Office granted appellant a schedule award for a 39 percent permanent impairment of the left upper extremity.

The Board finds that this case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office relied on the opinion of the Office medical adviser that appellant had a 39 percent impairment of the left upper extremity. The Office medical adviser, however, did not explain why appellant had 40 degrees of external rotation, which constituted a 1 percent impairment inasmuch as Dr. Wolf did not note this finding in her July 15, 1999 report. Further,

² The Board notes that it appears that Dr. Wolf mistakenly stated that appellant had a 41 percent permanent impairment of the right upper extremity rather than the left upper extremity inasmuch as her findings relate to appellant's left upper extremity.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

in utilizing Table 10 on page 47 of the A.M.A., *Guides* to determine that appellant had a 10 percent impairment due to 4/5 shoulder muscle weakness, the Office medical adviser did not identify the specific nerve of appellant's left shoulder that was affected, which is necessary for the use of this table.

Section 8123(a) of the Act provides in pertinent part: "If there is a 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."⁵

There is a conflict in the medical opinion evidence between the Office medical adviser who opined that appellant had a 39 percent impairment and Dr. Wolf, appellant's treating physician, who opined that appellant had a 41 percent impairment of the left upper extremity. Thus, the case must be remanded to the Office for further development. To resolve the outstanding conflict, the Office shall refer appellant, the case record and a statement of accepted facts to an appropriate specialist to obtain a detailed, well-rationalized opinion regarding the degree of permanent impairment of appellant's left upper extremity according to the appropriate edition of the A.M.A., *Guides*.

The Board notes that the selected specialist should determine the extent of permanent impairment based on the fifth edition rather than the fourth edition of the A.M.A., *Guides* as used by the Office. The Office's March 8, 2001 decision, was issued subsequent to the effective date for its use of the fifth edition of the A.M.A., *Guides*.⁶ Therefore, prior to its decision, the Office should have requested that the Office medical adviser resubmit an impairment rating evaluation using the fifth edition of the A.M.A., *Guides*.

⁵ 5 U.S.C. § 8123(a).

⁶ FECA Bulletin No. 01-05 (issued January 29, 2001) provides that "Awards calculated according to any previous edition should be evaluated according to the edition originally used. Any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001."

The March 8, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
March 11, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member