

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VELMA R. ROBINSON and U.S. POSTAL SERVICE,
WESTFIELD STATION, Houston, TX

*Docket No. 02-637; Submitted on the Record;
Issued September 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant is entitled to more than a five percent permanent impairment of her right upper extremity for which she received a schedule award.

The Board has reviewed the case on appeal and finds that appellant is not entitled to more than a five percent permanent impairment of her right upper extremity.

On February 14, 1989 appellant, then a 48-year-old letter carrier, filed a notice of traumatic injury alleging that on December 20, 1988 she injured developed back and leg pain as a result of picking up mail. The Office of Workers' Compensation Programs accepted appellant's claim on April 19, 1989 for cervical sprain and acute lumbar sprain with bilateral sciatica.

On July 1, 2000 appellant filed a claim for a schedule award for impairments to her neck and upper extremities.¹

On August 14, 2001 the Office awarded appellant a five percent permanent disability for the right upper extremity (shoulder).

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ 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

¹ Appellant previously received, by schedule award issued April 1, 1998, awards for a total of a 27 percent impairment to her left lower extremity and 12 percent impairment of her right lower extremity.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ (hereinafter A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that, in obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent description of the impairment."⁵ This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁶

By letter dated September 18, 2000, the Office asked Dr. Stephen J. Weiss, appellant's treating orthopedic surgeon, to evaluate the degree of impairment due to appellant's employment-related upper back or neck condition, including any resulting impairment to one or both of her upper extremities. The Office instructed Dr. Weiss to utilize the fourth edition of the A.M.A., *Guides*, which was still in effect at that time. In a report dated October 4, 2000, Dr. Weiss found numbness and tingling in the upper extremities, pain in the cervical area, diminished two-point discrimination of the right C6-7 dermatomes and bilateral manual upper extremity muscle strength of 4-/5. With respect to appellant's range of motion, Dr. Weiss used the fourth edition of the A.M.A., *Guides*, to find a four percent total impairment of the left shoulder and a five percent total impairment of the right shoulder. He also found a 15 percent impairment of the cervical spine, due to cervicothoracic spine impairment, Class III: Radiculopathy yielding a 15 percent impairment.

On March 21, 2001 the Office referred Dr. Weiss' report to the Office medical adviser, and asked the medical adviser to assess the date of maximum medical improvement, functional loss of use and percentage of impairment of appellant's right upper extremity. The Office did not specify whether the medical adviser was to apply the fourth edition of the A.M.A., *Guides*, as utilized by Dr. Weiss or the newly effective fifth edition. The Office further did not ask the medical adviser to evaluate appellant's left upper extremity.

⁴ At the time of the August 14, 2001 schedule award, the Office utilized the fourth edition of the A.M.A., *Guides*. A.M.A., *Guides* (4th ed. 1993). Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards. FECA Bulletin No. 01-05 (issued January 29, 2001). The Board notes, however, that because in this case, the application of the fifth edition of the A.M.A., *Guides* yields the identical results, the Office's application of the fourth edition to this case was harmless.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

⁶ *Noe L. Flores*, 49 ECAB 344 (1998).

In a report dated March 30, 2001, the Office medical adviser reviewed the medical evidence and concluded, based on Dr. Weiss' October 4, 2000 report, that appellant had reached maximum medical improvement on October 3, 2000, the date of Dr. Weiss' medical examination. The medical adviser further concurred with Dr. Weiss' calculations and conclusion that appellant had a five percent impairment of the right upper extremity. The Office medical adviser did not evaluate appellant's left upper extremity.

The Office medical adviser correctly applied the A.M.A., *Guides* to the medical findings of record. Using Figure 38, page 43, the Office medical adviser found that appellant's right shoulder flexion of 145 degrees equated to a 2 percent impairment. Again using Figure 38, page 43, the Office medical adviser found that appellant's right shoulder extension of 52 degrees equated to a 0 percent impairment. Using Figure 41, page 44, he found that appellant's right shoulder abduction of 142 degrees equated to a 2 percent impairment and 38 degrees adduction equated to a 0 percent impairment. Lastly, using Figure 44, page 45, the Office medical adviser found that appellant's internal rotation of 65 degrees equated to a 1 percent impairment and her external rotation of 69 degrees equated to a 0 percent impairment. The total percentage of impairment equaled five percent.

The Office medical adviser compared Dr. Weiss' physical findings to the appropriate figures and pages in the A.M.A., *Guides* and properly calculated a five percent permanent impairment of the right upper extremity, which was in accordance with Dr. Weiss' own findings.

In his October 4, 2000 report, Dr. Weiss combined the results from the loss of motion tables for the right and left upper extremities with appellant's cervical spine impairment, to arrive at a 19 percent total impairment of the whole person. The Board notes that the Office correctly found a lack of a basis for a schedule award for appellant's cervical impairment, as the spine and the whole person are specifically excluded from the schedule.⁷ The Board finds that the Office medical adviser correctly determined appellant's level of right upper extremity permanent impairment to be five percent by using only loss of motion.

Finally, the Board notes that while the Office specifically asked Dr. Weiss to determine whether appellant's accepted cervical condition had resulted in any impairment to one or both of her upper extremities and while Dr. Weiss did determine that appellant had a four percent permanent impairment of her left upper extremity, in addition to the five percent for her right upper extremity awarded by the Office, the Office has yet to issue its decision with respect to appellant's left upper extremity.

⁷ Although the A.M.A., *Guides* include guidelines for estimating impairment due to disorders of the spine, under the Act no schedule award is payable for injury to the spine. *James E. Mills*, 43 ECAB 215 (1991). However, the Board has noted that in 1966, amendments to the Act modified the schedule award provisions to provide for an award for impairment to a member of the body covered by the schedule regardless of whether the cause of the disability originated in a scheduled or nonscheduled member. For this reason, a claimant may be entitled to a schedule award for impairment to an extremity where the cause of the impairment originates in the spine. *John Litwinka*, 41 ECAB 956 (1990).

The August 14, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 12, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member