

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET A. PIATKOWSKI and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Philadelphia, PA

*Docket No. 03-644; Submitted on the Record;
Issued April 14, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

Appellant, a 48-year-old tax examiner, filed a notice of occupational disease on July 25, 1996 and alleged that she developed biceps tendinitis in her right arm and chronic repetitive motion syndrome due to factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for right shoulder adhesive capsulitis and surgery on December 2, 1998.

Appellant requested a schedule award on January 3, 1999. By decision dated September 15, 2000, the Office found that appellant had a one percent impairment of her right upper extremity due to loss of range of motion and granted appellant a schedule award. Appellant requested an oral hearing and, by decision dated April 30, 2001 and finalized May 1, 2001, the hearing representative affirmed the Office's September 15, 2000 decision.

Appellant requested reconsideration and submitted additional medical evidence on August 6, 2001. By decision dated September 18, 2002, the Office reviewed appellant's claim on the merits and concluded that she had no more than a one percent permanent impairment of her right upper extremity for which she received a schedule award.

The Board finds that appellant has no more than a one percent permanent impairment of her right upper extremity for which she received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

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

Appellant's physician, Dr. David Weiss, an osteopath, completed a report on February 2, 1999 providing appellant's impairment rating based on the fourth edition of the A.M.A., *Guides*. Dr. Weiss found that appellant continued to experience right shoulder pain and stiffness on a daily basis. He also noted that appellant reported weakness in her right upper extremity. Dr. Weiss found that appellant had acromioclavicular tenderness in the right shoulder, that Hawkin's impingement sign was positive with 160 degrees of forward elevation, abduction of 170 degrees and adduction of 70 degrees. Dr. Weiss stated that grip strength testing revealed 31 kilograms of force strength in the right hand versus 37 kilograms of force strength in the left hand. He concluded that appellant had a 24 percent impairment due to right shoulder arthroplasty and a 1 percent impairment due to loss of flexion for a total of 25 percent permanent impairment of the right upper extremity.

The Office noted that appellant's operative report on December 23, 1996 indicated that appellant underwent manipulation of the right shoulder under anesthesia with brisement of the joint and subacromial bursa. The Office referred this report to Dr. Seymour Shlomchik, a Board-certified orthopedic surgeon, to determine if this procedure was the equivalent of an arthroplasty. In a report dated May 17, 1999, Dr. Shlomchik reviewed the records provided and stated, "Since the procedure was closed and constituted basically a manipulation and injection, certainly there was no resection arthroplasty of the glenohumeral joint."

The Board finds that Dr. Weiss did not explain why he believed that appellant's December 23, 1996 surgery was a resection arthroplasty and that the weight of the medical evidence is represented by Dr. Shlomchik's report. This report establishes that, as the procedure appellant underwent was closed, with merely an injection, there was no arthroplasty and that appellant is not entitled to a schedule award due to an arthroplasty which did not occur.

Following Dr. Shlomchik's report, Dr. Weiss revised his February 2, 1999 report to include a 1 percent impairment for loss of flexion and a 10 percent impairment due to right grip strength deficit. Dr. Weiss did not provide any additional findings or reasoning in support of his amended rating.

The district medical director reviewed this report on September 11, 2002 and stated, "Grip strength is only ratable in limited circumstances in the A.M.A., *Guides*, fifth edition. In this claim, loss of grip strength if related to the shoulder conditions as asserted by Dr. Weiss would not be ratable because: (1) decreased strength cannot be rated in the presence of decreased motion; and (2) rating based on anatomic findings take precedence." The district medical director also noted that there was no indication that appellant's decreased grip strength was permanent and would not be improved by appropriate strengthening exercises.

The fifth edition of the A.M.A., *Guides* is applicable to all decisions issued after February 1, 2001, including situations where a claimant who has received a schedule award under a previous edition is entitled to additional benefits.³ In fact, all permanent partial impairment calculations made on or after February 1, 2001 must be based on the fifth edition.⁴ Therefore, the Office must apply this version of the A.M.A., *Guides* in calculating appellant's permanent impairment. The fifth edition of the A.M.A., *Guides* provides that strength measurements are not assigned a large role and that further research is needed regarding the loss of grip and pinch strength.⁵ The A.M.A., *Guides* state, "Decreased strength *cannot* be rated [by grip strength] in the presence of decreased motion, painful conditions, deformities, or absence of parts (e.g., thumb amputation) that prevent effective application of maximal force in the region being evaluated."⁶ (Emphasis added.) The A.M.A., *Guides* further provide that impairment ratings based on objective anatomic findings take precedence over strength testing and that impairments due to loss of strength based on strength testing could be combined with other impairments, only if based on unrelated etiologic or pathomechanical causes.

Dr. Weiss did not address any of the concerns raised by the A.M.A., *Guides* in his reports. In his initial report, Dr. Weiss listed appellant's grip strength, but did not assign any impairment rating. In his revised report, he merely provided that appellant had a 10 percent permanent impairment due to her grip strength. Dr. Weiss did not provide the results of testing at intervals during the examination as described in the A.M.A., *Guides*, which suggest repeating the test three times with each hand at different times during the examination.⁷ Dr. Weiss did not provide any medical reasoning explaining why he believed that grip strength testing was an appropriate method of determining appellant's permanent impairment in this case. He did not address the issues raised by the A.M.A., *Guides* and the district medical director and did not explain why he did not include this impairment rating in his initial report. Due to the lack of medical findings and rationale supporting that appellant's grip strength testing was carried out appropriately and that it was based on unrelated etiologic causes, the Board finds that appellant has failed to establish her entitlement that she is entitled to more than a one percent schedule award.⁸

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(a)(4) (August 2002).

⁴ *Id.*

⁵ A.M.A., *Guides*, 507.

⁶ *Id.* at 508.

⁷ *Id.*

⁸ *Rebecca L. Nieves*, Docket No. 02-268 (issued July 12, 2002).

The September 18, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 14, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member