

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD L. CLARVOE and GENERAL SERVICES ADMINISTRATION,
FEDERAL SUPPLY SERVICE, Burlington, NJ

*Docket No. 03-655; Submitted on the Record;
Issued April 22, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 20 percent permanent impairment to his right arm.

On February 23, 2000 appellant, then a 40-year-old material handler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he sustained injuries on February 9, 2000, when he was struck by a forklift. The Office of Workers' Compensation Programs accepted a right shoulder impingement; on July 11, 2000 he underwent arthroscopic surgery. Appellant returned to work in October 2000.

In a decision dated January 2, 2002, the Office issued a schedule award for a 20 percent permanent impairment to the right arm. The period of the award was 62.4 weeks from April 24, 2001.

By decision dated October 24, 2002, an Office hearing representative affirmed the prior decision.

The Board finds that the case is not in posture for a decision due to a conflict in the medical evidence.

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 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

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. As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.³

In a report dated May 10, 2001, Dr. David Weiss, an osteopath, opined that appellant had a 29 percent permanent impairment to the right arm. He found that, under Table 16-27, appellant had a 24 percent impairment for the right shoulder arthroplasty, combined with 6 percent for loss of flexion and abduction range of motion.⁴ These percentages were combined under the Combined Values Chart for a 29 percent impairment.⁵ In a note dated July 12, 2001, Dr. Harlan Hiramoto, an attending orthopedic surgeon that performed the July 11, 2000 surgery, stated that he had reviewed Dr. Weiss' report and agreed that appellant had a 29 percent permanent impairment.

In an undated report, an Office medical adviser opined that the impairment under Table 16-27 was 15 percent. The medical adviser stated that the surgery was not an implant arthroplasty; the medical adviser then indicated that he determined the impairment to be 50 percent of the impairment for total shoulder resection arthroplasty (30 percent) because the surgery was a partial resection.⁶ The medical adviser combined 15 percent with 6 percent for loss of range of motion for a 20 percent impairment.

The record indicates that there is a clear disagreement between the attending physicians, including the physician that performed the surgery and the Office medical adviser, with respect to application of Table 16-27. Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁷ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁸

The case will be remanded to the Office to resolve the conflict in the medical evidence as to the degree of permanent impairment in this case. After such further development as the Office deems necessary, it should issue an appropriate decision.

³ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁴ A.M.A., *Guides*, Table 16-27 at 506; the shoulder impairments due to loss of range of motion are provided at pages 476-77, Figures 16-40 and 16-43.

⁵ *Id.* at 604, Combined Values Chart.

⁶ The Board notes that Table 16-27 does not specifically provide a 15 percent impairment. For total shoulder implant arthroplasty, the impairment is 24 percent; for total shoulder resection arthroplasty it is 30 percent, distal clavical resection 10 percent and proximal clavical 3 percent.

⁷ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁸ *William C. Bush*, 40 ECAB 1064 (1989).

The decision of the Office of Workers' Compensation Programs dated October 24, 2002 is set aside and the case remanded for further development consistent with this decision of the Board.

Dated, Washington, DC
April 22, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member