

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN D. COLEMAN and U.S. POSTAL SERVICE,
BOYSTOWN STATION, Boystown, NE

*Docket No. 03-1246; Submitted on the Record;
Issued August 20, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

Appellant, a 60-year-old part-time flexible distribution clerk, filed a notice of traumatic injury on February 14, 1999 alleging that on September 15, 1998 she injured her left shoulder lifting in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left rotator cuff tear, left shoulder impingement and surgical repair.

The Office denied appellant's claim for continuation of pay on April 12, 1999. Appellant requested a review of the written record and, by decision dated September 23, 1999, the hearing representative affirmed the Office's April 12, 1999 decision. In a decision dated April 7, 2000, the Office found that appellant's permanent reassignment position represented her wage-earning capacity and reduced her compensation to zero.

Appellant requested a schedule award on April 26, 2002. Appellant's attending physician, Dr. Gregory M. Hansen, a Board-certified orthopedic surgeon, found that she reached maximum medical improvement on June 15, 1999 and that she had a 15 percent permanent impairment of her left upper extremity. Dr. Hansen did not provide any findings in support of his impairment rating.

The Office referred appellant for a second opinion evaluation on June 19, 2002 with Dr. Andrew Lee, a Board-certified physiatrist, who noted that appellant was experiencing increased symptoms in her left upper extremity due to a right arm condition. He concluded that appellant was not at maximum medical improvement at the time of his examination.

The Office referred appellant for a second opinion evaluation with Dr. Marichris Zahnle, a Board-certified physiatrist, on January 3, 2003. Dr. Zahnle completed a report on January 17, 2003 and concluded that appellant had reached maximum medical improvement and that she had 4.5 percent permanent impairment to her left upper extremity. In a decision dated February 27,

2003, the Office found that appellant had a five percent permanent impairment of her left upper extremity and granted her a schedule award for the period January 17 to May 6, 2003.

The Board finds that appellant has a six percent permanent impairment of her left upper extremity.

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 uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Appellant's attending physician, Dr. Hansen, a Board-certified orthopedic surgeon, initially provided his opinion on June 15, 1999 that appellant had reached maximum medical improvement and that she had 15 percent permanent impairment of her left upper extremity. Dr. Hansen apparently relied on a functional capacity evaluation in reaching his impairment rating. In his June 15, 1999 report, he provided limited findings in support of his impairment rating noting that appellant's "range of motion ... is good" and that "she still has some pain and crepitation." He concluded that appellant had reached maximum medical improvement and had a 15 percent upper extremity impairment rating. Dr. Hansen mentioned the A.M.A., *Guides* but did not correlate his findings with the A.M.A., *Guides* in describing appellant's loss of range of motion.

Due to the deficiencies in Dr. Hansen's report, the Office referred appellant for a second opinion evaluation. The second opinion physician, Dr. Lee, a Board-certified physiatrist, found that appellant had experienced a resurgence of her left shoulder symptoms due to overuse caused by her right arm impairment. He concluded that appellant was not at maximum medical improvement at that time. Maximum improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.⁴ The determination of maximum medical improvement is not to be based on surmise or prediction of what may happen in the future. A schedule award is appropriate where the physical condition of an injured member has stabilized, despite the possibility of an eventual change in the degree of functional impairment in the member.⁵ The question of when maximum medical improvement has been

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ Fifth edition 2001. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

⁴ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989).

⁵ *Id.*

reached is a factual one which depends on the medical findings in the record and the determination of such date is made in each case upon the basis of submitted medical evidence.⁶ As Dr. Lee provided a reasoned explanation for his opinion that appellant was not at maximum medical improvement at the time of his report, the Office properly declined to issue a schedule award based on findings predating this report.

Following Dr. Lee's June 19, 2002 report, Dr. Hansen completed a report dated September 23, 2002 and opined that appellant had reached maximum medical improvement and that she had a 10 percent permanent impairment of her left upper extremity. Dr. Hansen did not explain why he felt that appellant's impairment rating had changed from his initial evaluation.

The Office referred appellant to Dr. Zahnle, a Board-certified physiatrist, for a second opinion evaluation. In a report dated January 3, 2003, Dr. Zahnle noted appellant's history of injury and performed a physical examination. She stated that appellant complained of persistent mild pain and difficulty with range of motion of her left shoulder. Dr. Zahnle found no atrophy in the shoulder girdle and that strength testing was within normal limits. She noted that sensory examination was within normal limits and that reflexes were equal and symmetrical. Dr. Zahnle noted that appellant did not have a permanent impairment due to pain.

Dr. Zahnle reported appellant's range of motion as flexion of 130 degrees, and found a 3 percent impairment; as well as extension of 45 degrees, finding a 0.5 percent impairment.⁷ She found external rotation of 80 degrees, not a ratable impairment; and internal rotation at 85 degrees, not a ratable impairment.⁸ Dr. Zahnle also found abduction of 150 degrees, a 1 percent impairment.⁹ Dr. Zahnle reported that appellant demonstrated left shoulder adduction of 25 degrees, but failed to note that this constitutes a 1 percent impairment. In order to reach an impairment rating for loss of range of motion, the various losses are added.¹⁰ Based on Dr. Zahnle's report, appellant has a six percent permanent impairment of her left upper extremity.

On remand, the Office should amend appellant's schedule award to include the additional one percent impairment of her left upper extremity due to shoulder adduction, for a total schedule award of six percent impairment.

⁶ *Eugenia L. Smith*, 41 ECAB 409, 413 (1990).

⁷ A.M.A., *Guides*, 476, Figure 16-40.

⁸ *Id.* at 479, Figure 16-46.

⁹ *Id.* at 477, Figure 16-43.

¹⁰ *Id.* at 479.

The February 27, 2003 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Dated, Washington, DC
August 20, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member