

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARMEN F. HARRISON and U.S. POSTAL SERVICE,
POST OFFICE, Trenton, NJ

*Docket No. 03-1282; Submitted on the Record;
Issued August 14, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 30 percent permanent impairment of the right upper extremity, for which she received a schedule award.

On July 12, 1995 appellant, then a 53-year-old letter sorting machine operator, filed a traumatic injury claim asserting that on May 8, 1995 she developed right shoulder and elbow pain while keying in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for right shoulder impingement and approved right rotator cuff repair and decompression, which was performed on January 29, 1996. In addition to appellant's 1995 injury, the Office previously accepted a December 8, 1993 claim for right medial epicondylitis and an October 4, 1994 claim for right elbow strain. On January 29, 2001 she filed a claim for a schedule award for an impairment to her right upper extremity.

In support of her claim, appellant submitted a report dated December 13, 2000 from Dr. David Weiss, an attending osteopath, who noted that appellant had reached maximum medical improvement on December 11, 2000 and that testing of the right shoulder revealed 90 degrees of abduction, 160 degrees of forward flexion, 90 degrees of external rotation, cross-over adduction of 75 degrees and internal rotation to T10. Dr. Weiss further stated that appellant had increased persistent tenderness over the acromioclavicular joint but no tenderness over the tip of the acromion. Hawkins' impingement sign was positive and anterior cuff tenderness was noted and appellant exhibited marked crepitus within the acromioclavicular joint. Isolated musculature testing revealed the following: supraspinatus 5/5; deltoid 5/5; biceps 4/5; and triceps 4+/5. The bicipital load test was negative. Examination of the right elbow revealed marked tenderness over the lateral epicondyle extending into the right lateral extensor mechanism, but no olecranon tenderness and no effusion. There was tenderness over the medial epicondyle and over the medial flexor mass, but Tinel's sign was negative. Range of motion testing of the right elbow revealed flexion-extension of 145 degrees, pronation of 80 degrees and supination of 80 degrees. Wrist hyperextension sign was positive, valgus and varus stress testing revealed no instability and wrist extensors were graded as 4/5. Appellant's upper and lower arm measurements were equal bilaterally. Dr. Weiss further noted that appellant's grip strength, tested with a Jamar

dynamometer at level III, revealed 4 kilograms force of strength on the right and 16 kilograms force of strength on the left, which was markedly abnormal. A sensory examination failed to reveal any perceived dermatomal abnormalities involving the right upper extremity. Dr. Weiss noted that appellant's employment injuries were the cause of all of her right upper extremity findings and concluded that, pursuant to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a 5 percent impairment of the right shoulder for range of motion deficits, a 25 percent impairment due to right shoulder arthroplasty and a 28 percent impairment due to right elbow arthroplasty, a 6 percent impairment for biceps motor strength deficits, a 10 percent impairment due to triceps and wrist strength deficits and a 30 percent impairment for right grip strength deficit, for a combined total right upper extremity impairment of 70 percent.

On March 1, 2001 an Office medical adviser reviewed Dr. Weiss' evaluation and recommended that appellant be referred for a second opinion.

On February 13, 2002 Dr. David Rubinfeld, a Board-certified orthopedic surgeon, performed a second opinion evaluation at the request of the Office. The Office provided him with a statement of accepted facts, a list of questions to be addressed and copies of the relevant medical evidence of record. In his report, Dr. Rubinfeld provided his findings on range of motion testing of appellant's right and left shoulders, elbows, wrists, hands and cervical spine, noting that all results were normal. He noted that appellant had some discomfort at full right shoulder abduction, but no tenderness on palpation of the elbows, wrists or hands and negative Phalen's and Tinel's signs. Dr. Rubinfeld noted good grip strength in both hands and normal motor strength in the deltoid, triceps, biceps, forearms and hands, bilaterally. Deep tendon reflexes were equal bilaterally at the triceps, biceps and brachioradialis and sensation was intact in the upper extremities bilaterally. Dr. Rubinfeld concluded that pursuant to the fifth edition of the A.M.A., *Guides*, appellant had a 0 impairment of her right shoulder and elbow due to loss of range of motion, a 30 percent impairment of the right shoulder due to right shoulder arthroplasty and resection and a 0 percent impairment for loss of motor strength, for a combined right upper extremity impairment of 30 percent. Dr. Rubinfeld noted that the major reason for the discrepancy between his determination of impairment and that of Dr. Weiss was the fact that Dr. Weiss accorded appellant a 28 percent impairment for right elbow surgery. Dr. Rubinfeld explained that, despite Dr. Weiss' conclusions, the A.M.A., *Guides* refer specifically to elbow arthroplasty as including the radial head being resected or replaced, which was not done in this case. In addition, Dr. Rubinfeld noted that appellant's accepted condition was right medial epicondylitis, not lateral epicondylitis where the surgery was done.

On March 19, 2002 an Office medical adviser reviewed Dr. Rubinfeld's evaluation and concurred with his findings, especially with respect to the right elbow surgery. The Office medical adviser agreed that appellant had a 30 percent permanent impairment of her right upper extremity.

On May 6, 2002 the Office issued appellant a schedule award for a 30 percent permanent impairment of her right upper extremity.

By letter dated May 10, 2002, appellant requested an oral hearing and submitted an additional medical report from Dr. Weiss. In his supplemental report dated December 11, 2002,

Dr. Weiss acknowledged that appellant did not undergo right elbow arthroplasty as defined in the fifth edition of the A.M.A., *Guides*, but stated that appellant did undergo extensive right elbow surgery, including debridement of the extensor tendon, osteotomy of the lateral humeral epicondyle and arthrotomy with debridement of the synovium and ligament. He asserted that it should be kept in mind that the A.M.A., *Guides* are just guidelines to permanent impairment and that practitioners must use their own judgment in rating the degree of impairment in their patients. Dr. Weiss concluded that it is obvious that appellant underwent a significant surgical procedure and that in his opinion the procedure equated to an impairment rating which would be equivalent to a right elbow arthroplasty with a rating of 28 percent.

In a decision dated January 24, 2003, an Office hearing representative affirmed the Office's prior decision.

The Board finds that appellant has no more than a 30 percent permanent impairment of her right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*³ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards.⁵

In the instant case, the Office determined that appellant had a 30 percent permanent impairment of her right upper extremity by adopting the findings of Dr. Rubinfeld, the Office referral physician, who determined the precise impairment rating based on the applicable figures and tables of the fifth edition of the A.M.A., *Guides*. The Office further noted that Dr. Rubinfeld's findings had been reviewed by an Office medical adviser, who concurred with Dr. Rubinfeld's conclusions. The Board finds that the weight of the medical evidence is represented by the thorough and well-rationalized opinion of Dr. Rubinfeld, who noted that, upon physical examination, no restrictions of motion were present in the upper extremities and there was no loss of strength, atrophy, anklyosis or sensory changes, but only some discomfort at the limits of abduction of the right shoulder. He accorded appellant a 30 percent impairment rating for her right shoulder arthroplasty, which is in general accord with Dr. Weiss' own rating

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁴ See *Joseph Lawrence, Jr.*, *supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ FECA Bulletin No. 01-05 (issued January 29, 2001).

regarding appellant's right shoulder.⁶ In addition, Dr. Rubinfeld reviewed the record and provided a reasoned explanation regarding why appellant's right elbow surgery was not considered an arthroplasty and, therefore, Table 16-27 at page 506 was inapplicable. While Dr. Weiss provided a contrary opinion in his supplemental report dated December 11, 2002, in which he disagreed with Dr. Rubinfeld and asserted that appellant's right elbow surgery was serious and was the equivalent of an arthroplasty, he nonetheless acknowledged that the procedures performed were not arthroplasty as defined by the fifth edition of the A.M.A., *Guides*. In addition, Dr. Rubinfeld's report was also reviewed by an Office medical adviser, who concurred with his statements regarding the right elbow surgery. Finally, the Board notes that while Dr. Weiss reported several deficits in upper extremity strength and motion in his report dated December 13, 2000, completed approximately 14 months prior to Dr. Rubinfeld's examination, he did not contest Dr. Rubinfeld's normal range of motion and strength findings in his supplemental report dated December 11, 2002. Therefore, the Office properly determined that appellant was not entitled to more than a 30 percent permanent impairment of the right upper extremity.

The January 24, 2003 and May 6, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 14, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ Dr. Weiss accorded appellant a 25 percent impairment for her right shoulder arthroplasty, pursuant to the fourth edition of the A.M.A., *Guides*.