

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN W. DUKENFIELD and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 03-151; Submitted on the Record;
Issued March 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than an eight percent impairment for his right upper extremity, for which he received a schedule award.

On April 28, 1989 appellant, then a 34-year-old machinist, filed a claim alleging that on April 27, 1989 he sustained an injury to his right shoulder when he lifted a 14-inch test flange.

The Office of Workers' Compensation Programs accepted right shoulder strain and authorized arthroscopic surgery.

Appellant then filed a claim for a schedule award and submitted a November 20, 2000 report from Dr. David Weiss, his treating osteopath, who evaluated appellant based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) and recommended a 30 percent right upper extremity impairment.

On February 27, 2001 the Office advised Dr. Weiss to submit an impairment rating based on the A.M.A., *Guides* (5th ed. 2001). On March 14, 2001 the Office received a second copy of Dr. Weiss' November 20, 2000 report that was unchanged from the original report. Dr. Weiss stated that appellant had undergone right shoulder arthroscopy and recommended an impairment rating of 24 percent for that procedure.

On March 22, 2001 the Office referred the case file to Dr. Nabil F. Anglely, an Office orthopedic medical adviser. The file was accompanied by a statement of accepted facts and a request to evaluate appellant's impairment using the A.M.A., *Guides* (5th ed. 2001). In a report dated March 28, 2001, Dr. Anglely stated that Dr. Weiss incorrectly noted that appellant had undergone a total shoulder resection (implant arthroplasty). He also noted that Dr. Weiss failed to identify specifically what motor nerve was involved to support his supraspinatus, biceps and triceps impairment ratings. By letter dated April 2, 2001, the Office advised appellant's counsel of the deficiencies in Dr. Weiss' report and provided 30 days for a response. In a report dated May 7, 2001, Dr. Weiss amended his November 20, 2000 report by replacing motor deficit

impairment ratings with an impairment rating of three percent for “pain-related impairment.” The amended impairment rating for appellant’s right shoulder was 30 percent.¹ In a report dated June 27, 2001, the Office medical adviser reviewed Dr. Weiss’ report and determined that appellant had a eight percent impairment of the right upper extremity.

By decision dated November 9, 2001, the Office awarded appellant an eight percent impairment rating of the right upper extremity. By letter dated November 21, 2001, appellant, through counsel, requested an oral hearing. A hearing was held on March 12, 2001. In a decision issued and finalized on July 11, 2002 the hearing representative upheld the Office’s November 9, 2001 decision, awarding appellant an eight percent impairment rating of the right upper extremity.

The Board finds that appellant has failed to establish more than an eight percent impairment of the right upper extremity for which he received a schedule award.

The schedule award provisions 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 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

In his May 2001 amended report, Dr. Weiss stated that appellant had a right shoulder arthroscopic procedure and relied on Table 16-27 of the A.M.A., *Guides*, fifth edition, for a recommended impairment rating of 24 percent. This table refers to a total shoulder arthroplasty. However, in a report dated June 9, 1994, Dr. James A. Anthony, appellant’s Board-certified orthopedic surgeon, stated that on that day he performed an arthroscopic procedure on appellant, which included a resection of the labrum tissue and a debridement of the superior labrum anterior-posterior lesion. The Office medical adviser, therefore, correctly did not recommend an impairment rating based on a total shoulder arthroplasty. In all other respects, the Office medical adviser agreed with the evaluation by Dr. Weiss. He found the following: right shoulder flexion

¹ Dr. Weiss used the A.M.A., *Guides* (5th ed. 2001) although the narrative was not changed from earlier reports and notes the 4th edition.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

to 160 degrees of 1 percent,⁵ abduction to 100 degrees rated of 4 percent,⁶ pain impairment rated of 3 percent,⁷ for a combined total impairment rating of 8 percent of the right upper extremity.

The Office medical adviser's impairment rating of eight percent to the right upper extremity is based on the medical evidence of record and in accordance with the A.M.A., *Guides* (5th ed. 2001). Appellant has not presented evidence showing that he is entitled to more than a eight percent impairment to his right shoulder.

The July 11, 2002 and November 9, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 3, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁵ A.M.A., *Guides*, 476, Figure 16-40.

⁶ *Id.* at 477, Figure 16-43.

⁷ *Id.* at 574, Figure 18-1.