

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FLOYD R. READ and DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF PRISONS, Springfield, IL

*Docket No. 03-153; Submitted on the Record;  
Issued March 10, 2003*

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DECISION and ORDER

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

The issue is whether appellant has more than an eight percent impairment of the left upper extremity for which he received a schedule award.

On February 18, 2000 appellant, then a 45-year-old correctional officer, filed a claim stating that he injured his left shoulder on February 7, 2000 while in the performance of duty.

The Office of Workers' Compensation Programs accepted left shoulder scapular fracture, impingement syndrome and left shoulder atrophy and authorized left shoulder surgery. On November 30, 2001 Dr. Jon Sanchez, appellant's treating physician and a Board-certified orthopedic surgeon, performed arthroscopic surgery on appellant. Appellant returned to full duty on April 13, 2001.

In a report dated May 30, 2001, Dr. Sanchez stated that appellant's left shoulder "lack[s] the final few degrees of abduction, forward flexion and external rotation (abduction to 120 degrees, forward flexion to 135 degrees and external rotation to 75 degrees). He has some residual weakness with resisted abduction and forward flexion." Dr. Sanchez also noted that he "still has some residual limitation in motion and weakness which requires a final rating." Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), he stated that appellant had a 15 percent impairment of the upper left extremity.

On July 23, 2001 appellant filed a claim for a schedule award.

On September 7, 2001 the Office referred appellant to Dr. Jeffery Woodward for a second opinion.

In a report dated September 21, 2001, Dr. Woodward found abduction of 140 degrees, forward flexion of 160 degrees, external rotation of 40 degrees, internal rotation of 80 degrees, extension of 30 degrees and adduction of 30 degrees. He noted normal sensation and strength at

4 plus. Dr. Woodward rated appellant with a six percent impairment based on range of motion and 2 percent based on abduction strength deficit for a total impairment rating of eight percent.

In a report dated November 11, 2001, an Office medical adviser reviewed Dr. Woodward's report and determined that appellant had an eight percent left upper extremity impairment. The Office medical adviser stated: "Using the range of motion model, Dr. Woodward considered range of motion: chronic pain, sensory deficit and discomfort; and chronic weakness. Using the active range of motion reported in conjunction with Figures 16-40, 43 and 46, Dr. Woodward offered a rating of six percent. Due to weakness in abduction, he offered a rating of two percent. The Office medical adviser noted that Dr. Woodward did not support his two percent impairment rating for weakness, but he determined that the rating was acceptable "using the examination findings reported based on assessment parameters in [T]able 16-35, p[age] 510."

By decision dated December 4, 2001, the Office awarded appellant an eight percent schedule award of the left upper extremity.

By letter dated December 14, 2001, appellant requested a review of the written record.

In a report dated January 14, 2002, Dr. Sanchez stated that he examined appellant that day and reported that he had discomfort in left shoulder active and passive range of motion findings. He reported that in the left shoulder appellant had the following ranges of motion; abduction 120 degrees, forward flexion 135 degrees, external rotation 75 degrees and that "the remaining directions within normal limits." Based on the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), Dr. Sanchez rated appellant with a two percent impairment for loss of forward flexion, three percent for abduction, three percent for external rotation, totaling eight percent, and deltoid weakness was calculated at seven percent. He then totaled the separate impairments to find a 15 percent impairment of appellant's left upper extremity.

In a decision dated April 8, 2002, the hearing representative affirmed the Office's December 4, 2001 decision awarding appellant an eight percent schedule award. The hearing representative reviewed Dr. Sanchez' May 30, 2001 report, the second opinion physician's September 21, 2001 report, amended on October 12, 2001 and the Office medical adviser's November 11, 2001 report.

By letter dated July 12, 2002, appellant requested reconsideration. In support of his petition, appellant submitted a May 10, 2002 report from Dr. Sanchez, who stated that appellant's 15 percent impairment rating was based on the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) and noted:

"[M]ore specifically, the information is in Chapter 16 and the pertinent charts include Figure 16-40 (page 476), Figure 16-43 (page 477) and Figure 16-46 (page 479). These pertain to your limited range of motion. The pertinent charts for your shoulder weakness includes Table 16-11 (page 484) and Table 16-15 (page 492). Amazingly, recalculating your impairment once again equals 15 percent of the upper extremity at the shoulder level."

In a report dated September 7, 2002, the Office medical adviser reviewed Dr. Sanchez' reports dated January 14 and May 10, 2002 and determined that the January 14, 2002 report was deficient because it relied on the fourth edition of the A.M.A., *Guides*; and that range of motion was not reported on all applicable plane measurements using a goniometer; and that strength deficit findings were not done using the fifth edition of the A.M.A., *Guides*. The Office medical adviser noted that the May 10, 2002 report "offers no basis to review this ... schedule award" because it did not report any range of motion measurements; and that the consideration for strength measurements was incorrectly developed.

In a decision dated September 11, 2002, the Office denied modification of its prior April 2, 2002 decision.

The Board finds that the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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.<sup>3</sup>

In the instant case, appellant's treating physician, Dr. Sanchez, evaluated his range of motion on two separate occasions with the same results, while the second opinion physician reported different range of motion findings. For example, Dr. Sanchez found that appellant abducted to 120 degrees while the second opinion physician found that he abducted to 140 degrees. Further, Dr. Sanchez found 75 degrees of range of motion on external rotation, while the second opinion physician found 40 degrees of motion. Because the medical reports of Dr. Sanchez and Dr. Woodward conflict with respect to appellant's range of motion findings, a conflict in medical evidence exists in the record.

The Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>4</sup>

Therefore, appellant, the case record, together with a statement of accepted facts, must be referred to an impartial physician to resolve the conflict as to the degree of appellant's impairment of his left shoulder under the fifth edition of the A.M.A., *Guides*.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. § 8123(a).

The decision of the Office of Workers' Compensation Programs dated September 11, 2002 is set aside and the case is remanded to the Office for further development in accordance with this decision.

Dated, Washington, DC  
March 10, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member