U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA M. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

Docket No. 03-1980; Submitted on the Record;
Issued October 30, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than 15 percent permanent impairment of her right upper extremity, for which she received a schedule award.

Appellant, a 59-year-old mailhandler, filed a notice of traumatic injury on February 23, 1998 alleging that on that date she felt a pop in her arm as she lifted a tray of mail. The Office of Workers' Compensation Programs accepted her claim for exacerbation of a right shoulder strain and a rotator cuff tear with resulting surgery on April 6, 1998.

Appellant, through her attorney, requested a schedule award on December 16, 1998. By decision dated August 3, 2000, the Office granted her a schedule award for 11 percent permanent impairment of her right upper extremity. Appellant, through her attorney, requested an oral hearing on August 8, 2000. By decision dated July 13, 2001, the hearing representative remanded her claim for development of the medical evidence.

After further medical development, the Office granted appellant a schedule award for an additional 3 percent permanent impairment of her right upper extremity, for a total of 14 percent impairment. Appellant, through her attorney, again requested an oral hearing on September 7, 2001. By decision dated April 8, 2002, the hearing representative remanded the case for supplemental report from the second opinion physician. The Office issued a decision on July 23, 2002 granting appellant a schedule award for a total of 15 percent permanent impairment, a 1 percent increase.

Appellant, through her attorney, requested an oral hearing on July 26, 2002. By decision dated June 5, 2003, the hearing representative affirmed the Office's July 23, 2002 decision finding that appellant had no more than 15 percent permanent impairment of her right upper extremity.

The Board finds that this case is not in posture for decision due to an unresolved conflict in the medical opinion evidence.

The schedule award provisions of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses. Appellant submitted a report dated October 28, 1998 from Dr. Ronald J. Potash, a Board-certified surgeon, finding that she had a 32 percent permanent impairment of her right upper extremity in accordance with the fourth edition of the A.M.A., *Guides*. Dr. Potash provided appellant's history of injury and noted that she underwent surgery on April 14, 1998 consisting of an arthroscopic debridement; glenoid labrum, bicipital tendon and rotator cuff a subacromial decompression; open repair of the rotator cuff and open bicipital tenodesis of the right shoulder. He found that appellant had loss of range of motion of forward elevation of 135 degrees, a 3 percent impairment in accordance with the fifth edition of the A.M.A., *Guides*;[3] abduction of 120 degrees, a 3 percent impairment;[4] adduction of 60 degrees, a normal range of motion;[5] and external rotation of 45 degrees, a 1 percent impairment.[6] Dr. Potash found that appellant's supraspinatus musculature strength graded 4/5 on the right. He also concluded that appellant had a 24 percent impairment due to a right shoulder arthroplasty and a 4 percent impairment due to right supraspinatus motor strength deficit for a total impairment rating of 32 percent.

The Office referred appellant for a second opinion evaluation with Dr. Howard Zeidman, a Board-certified orthopedic surgeon, on July 11, 2001. In his July 30, 2001 report, Dr. Zeidman noted appellant's history of injury and medical treatment. He listed the findings of loss of range of motion noting that appellant had abduction of 90 degrees, a 4 percent impairment;[7] forward elevation of 90 degrees, a 6 percent impairment;[8] and an additional 4 percent impairment due to loss of total internal and external rotation.[9] Dr. Zeidman found that appellant had no neurologic loss, but diffuse motor weakness with no sensory or reflex change and no effusion. He stated, "It should be noted that, at this time, [appellant's] arthritis, which has developed since the time of

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] A.M.A., *Guides*, 5th edition, 476, Figure 16-40.

[4] *Id.* at 477, Figure 16-43.

[5] *Id.*

[6] *Id.* at 479, Figure 16-46.

[7] *Id.* at 477, Figure 16-43.

[8] *Id.* at 476, Figure 16-40.

[9] *Id.* at 479, Figure 16-46.

the injury, also plays a role, but I have recorded the disability as requested based upon the findings at the time of examination."

The hearing representative reviewed this report on April 8, 2002 and found that the medical evidence required additional development as Dr. Zeidman did not address an impairment based on appellant's surgical procedure, as he did not provide an impairment rating for loss of strength and as the Office medical adviser did not review this report prior to the issuance of the schedule award.

In a supplemental report dated June 20, 2002, Dr. Zeidman noted that appellant was experiencing increasing problems with pain and lifting. He specifically noted that appellant did not have a feeling of true weakness, but that she became weak after holding her arm up for a period of time due to pain. Dr. Zeidman stated that appellant had weakness on all motions with no specific sensory loss. He found that appellant's loss of range of motion had increased, noting that she lost an additional 15 degrees of abduction, a 5 percent impairment and an additional 10 percent of rotation, 6 percent impairment for internal and external rotation and forward elevation loss at 7 percent impairment, for total impairment of 18 percent.

In regard to the issues raised by the Office, Dr. Zeidman stated, "The operative procedure as described in the materials provided does not qualify as an arthroplasty. The procedure described as an arthroscopic debridement with repair of the rotator cuff and bicipital tendinitis." Dr. Zeidman noted that the fifth edition of the A.M.A., *Guides*, discussed arthroplasties and that the operative procedure on [appellant] in question did not qualify as an arthroplasty for that rating schedule.[10] He further found that the A.M.A., *Guides* did not consider strength because of the great difficulty in any type of objective measurement or evaluation. Dr. Zeidman noted that appellant's loss of strength was significantly based on pain, as well as limitation of motion, rather than a result of loss of neurologic control of muscle strength or specific muscle defect and that he deliberately did not make a specific recommendation for an additional impairment based on muscle or strength weakness. Finally, Dr. Zeidman stated that appellant had a further increase in her arthritic problems in her right shoulder. He stated that appellant required treatment for this problem and that a total shoulder replacement arthroplasty might be necessary.

The district medical adviser reviewed Dr. Zeidman's report on July 10, 2002. He agreed with Dr. Zeidman that appellant did not have additional impairment due to loss of strength and pain as this was taken into account in the calculation of loss of range of motion. The A.M.A., *Guides* provide that, because strength measurements are functional tests influenced by subjective factors that are difficult to control, a large role is not assigned to such measurements.[11] The A.M.A., *Guides* state that only if loss of strength is based on unrelated etiologic or pathomechanical causes can it be combined with other impairments in an extremity.[12] There is no evidence in the record establishing that appellant's loss of strength, in her right upper extremity, is due to a separate cause of injury or pathomechanical cause and, therefore, both

[10] *Id.* at 506, Table 16-27.

[11] *Id.* at 507, 16.8 Strength Evaluation.

[12] *Id.* at 508, 16.8a Principles.

Dr. Zeidman and the district medical adviser properly discounted any impairment rating based on loss of strength. Although Dr. Potash provided an impairment rating for loss of strength, he prepared his report under the fourth edition of the A.M.A., *Guides* and did not provide any specific medical reasoning for including this impairment rating addressing an additional etiology or pathomechanical cause. This aspect of his report is, therefore, of diminished probative value and does not require that the Office consider loss of strength in contravention of the applicable edition of the A.M.A., *Guides*.

The District medical adviser also agreed with Dr. Zeidman that no additional impairment rating was necessary for the evaluation of appellant's arthritis. Specifically, he found that appellant's increasing loss of range of motion was most likely due to the increase in arthritis and that this condition had been considered. The A.M.A., *Guides* do not provide a separate method for evaluating arthritis in the upper extremity[13] Furthermore, there is no medical evidence in the record providing any impairment rating due to this condition. Therefore, the Board finds that it was not necessary for the Office to consider appellant's impairment due to arthritis in formulating her permanent impairment for schedule award purposes.

The district medical adviser found that an additional loss of 15 degrees of abduction for a total loss of 75 degrees was a 5 percent impairment or an additional 1 percent impairment.[14] He further found that loss of an additional 10 degrees of rotation, did not result in an increased impairment rating.[15] He stated, "I assume 10 percent internal and external rotation combined." The Board notes that neither Dr. Zeidman nor the district medical adviser provided appellant's actual degrees of external and internal rotation and that as appellant's loss of range of motion has increased Dr. Potash's report cannot be determinative. Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[16] As there are no definite loss of range of motion figures, only combined impairment ratings for external and internal rotation, the Board is unable to determine how the physicians reached their separate conclusions: the district medical adviser finding no additional impairment; and Dr. Zeidman finding a total of six percent, an increase of two percent over the four percent impairment previously granted; regarding the degree of appellant's impairment due to loss of range of motion in external and internal rotation.

The district medical adviser stated, "[s]trictly speaking Dr. Zeidman is correct -- a partial arthroplasty was really done, but in view of his use of the tables of lost motion there is no need to use the arthroplasty tables. The lost motion takes into account the residuals of the surgery as well as the injury itself." The A.M.A., *Guides* provide that, in the presence of decreased motion, motion impairments are derived separately and *combined* with the arthroplasty impairment.

[13] *Id.* at 544, 17.2h Arthritis.

[14] *Id.* at 477, Figure 16-43.

[15] *Id.* at 479, Figure 16-46.

[16] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

(Emphasis in the original.)[17] The district medical adviser incorrectly stated that appellant could not be entitled to a schedule award for both loss of range of motion and an arthroplasty.

There is a disagreement in the medical evidence regarding whether appellant is entitled to an additional impairment rating based on her surgery. Dr. Zeidman, a Board-certified orthopedic surgeon and the second opinion physician, stated that appellant did not undergo an arthroplasty and, therefore, was not entitled to additional impairment rating for this surgery, Dr. Potash, appellant's physician and a Board-certified surgeon, found that she had undergone an arthroplasty and was entitled to an additional impairment rating. Section 8123(a) of the Act,[18] provides, "If there is 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." On remand the Office should refer appellant a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician, to determine the extent of her permanent impairment specifically addressing the issues addressed in this opinion. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The June 5, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this decision of the Board.

Dated, Washington, DC
October 30, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[17] A.M.A., *Guides*, 505, Section 16.7b Arthroplasty.

[18] 5 U.S.C. §§ 8101-8193, 8123(a).