

**United States Department of Labor
Employees' Compensation Appeals Board**

PRESCILLA SERAFIN, Appellant

and

**U.S. POSTAL SERVICE, MANZANO
STATION, Albuquerque, NM, Employer**

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**Docket No. 04-1419
Issued: December 27, 2004**

Appearances:
Gordon Reisel, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 4, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated August 5, 2003 and April 6, 2004, which found that she was not entitled to an additional schedule award for her right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

ISSUE

The issue is whether appellant is entitled to an additional schedule award for her right upper extremity. On appeal appellant's attorney contends that appellant is entitled to an additional 14 percent impairment for the right upper extremity, the difference between the 20 percent right upper extremity permanent impairment rating issued in a July 29, 1996 schedule award and the 34 percent right upper extremity permanent impairment rating given by her attending physician.

FACTUAL HISTORY

On June 30, 1994 appellant, a 58-year-old clerk, filed a traumatic injury claim alleging that she injured her right knee and elbow when she fell while in the performance of duty. The Office accepted the claim for left knee internal derangement, right knee fracture, right shoulder strain and authorized left knee arthroscopy,¹ which was performed on September 30, 1994.² On July 2, 2002 the Office expanded appellant's claim to include the consequential injury of left wrist sprain/strain and other specified disorders of the left forearm and joint. Appellant stopped work on June 30, 1994 and returned to a limited-duty position on May 4, 1995.³ On April 14, 1997 the Office authorized bilateral total knee replacement surgery, which was performed on May 12, 1997.

On October 20, 1995 appellant filed a claim for a schedule award for her right and left lower extremities.

By decision dated July 29, 1996, the Office issued appellant a schedule award for a 20 percent permanent impairment of the right upper extremity, a 22 percent permanent impairment of the left lower extremity and a 26 percent permanent impairment of the right lower extremity. The period of the award was for June 26, 1996 through April 30, 2000.

On October 23, 2002 appellant filed a claim for a schedule award and submitted an August 14, 2002 report by Dr. George R. Swajian, an attending Board-certified osteopathic orthopedic surgeon, in support of her claim. Dr. Swajian concluded that appellant had an 18 percent impairment of the left upper extremity, a 34 percent impairment of the right upper extremity, a 75 percent impairment of the right lower extremity and a 75 percent impairment of the left lower extremity. A physical examination of the upper extremities revealed:

“[N]ormal passive range of motion in the left shoulder with 180 [degrees] of flexion and abduction, but the right shoulder passively is markedly limited with flexion being 105 [degrees] and abduction being 85 [degrees]. Internal and external rotation in the right shoulder. The elbow and wrists present with normal range of motion according to the A[merican] M[edical] A[ssociation,] *Guides to the Evaluation of Permanent Impairment*, Fifth Edition.⁴

¹ The surgery also included a partial left knee medial meniscectomy and chondroplasty of the medial femoral condyle.

² On February 17, 1995 appellant underwent right knee arthroscopy, partial medial meniscectomy and right knee debridement of the medial femoral condyle and chondroplasty. The record contains no evidence that this was authorized by the Office.

³ In a decision dated July 10, 1995, the Office issued a loss of wage-earning capacity decision which found the limited-duty clerk position fairly and reasonably represented her wage-earning capacity.

⁴ Hereinafter A.M.A., *Guides* (5th ed.)

In addition, Dr. Swajian reported:

“[L]imited motion in the right shoulder girdle the patient also has a positive horn blower’s test on the right and complete loss of strength with a positive lateral arm drop test on the right. All of this indicates definite indication of rotator cuff tear. There is also a definite marked pain in the subacromial space in the right shoulder to palpation.”

In reaching the impairment rating for the right upper extremity, the physician noted:

“[T]he patient has marked limitation of motion as well as marked loss of muscle function. As listed in Table 16-11 on page 484 this would give her in my opinion an 80 [percent] motor deficit. This would be multiplied by combined motor and sensory deficits of 34 [percent] listed on Table 16-13 on page 489. This would give us 20 [percent] impairment of the upper extremity with regards to weakness of the right upper extremity. We also would add to this the limited motion of the shoulder girdle. Flexion of the right shoulder is 105 [degrees] which would give us 5 [percent] impairment of the upper extremity. Abduction is 85 [degrees] and according to Table⁵ 16-43 on page 477 would entitle the patient to a 4.5 [percent] impairment. We therefore would add 5 plus 4.5 [percent] which would give us 10 [percent] of the upper extremity on the right due to rotator cuff injury with limited motion and weakness. Twenty seven and 10 is (sic)equivalent to a 34 [percent] impairment of the right upper extremity in the [C]ombined [V]alues [C]hart on page 604 of the A.M.A., *Guides to the Evaluation of Permanent Impairment*, Fifth Edition.

In a July 7, 2003 report, the Office medical adviser reviewed Dr. Swajian’s August 14, 2002 report and concluded that appellant had a 75 percent permanent impairment of the right lower extremity, a 75 percent permanent impairment of the left lower extremity, a 12 percent permanent impairment of the left upper extremity and a 10 percent impairment of the right upper extremity. In reaching the impairment rating for the right upper extremity, the Office medical adviser found a 5 percent impairment due to 105 degrees of flexion and a 5 percent impairment for 85 degrees of flexion, which resulted in a total impairment for the right upper extremity of 10 percent based upon Figure 16-37 at page 474,⁶ Figure 16-40 at page 460 and Figure 16-46 at page 479. With regard to strength loss, the Office medical adviser indicated that the fifth edition of the A.M.A., *Guides*, prohibited combining strength loss and range of motion loss in determining impairment.

By decision dated August 5, 2003, the Office issued appellant a schedule award for a 12 percent permanent impairment of the left upper extremity, a 75 percent permanent impairment, less the 26 percent previously awarded, of the right lower extremity and a 75 percent permanent

⁵ This appears to be a typographical error as there is no Table 16-43. The A.M.A., *Guides* note a Figure 16-43 at page 477.

⁶ The Office medical adviser erroneously referred to page 477 when referring to Figures 16-37, 16-40 and 16-46.

impairment, less the 22 percent previously awarded, of the left lower extremity. The period of the awards were August 14, 2002 through December 18, 2008.

Appellant requested reconsideration on August 12, 2003. Appellant requested the Office to reconsider the right upper extremity impairment rating as Dr. Swajian concluded that appellant had a 34 percent impairment.

In a March 28, 2004 report, the Office medical adviser noted that appellant had been issued a schedule award for a 20 percent permanent impairment of the right upper extremity on July 25, 1996. He noted that the July 7, 2003 schedule award for the right upper extremity “was 10 [percent] based upon right shoulder R[ange] O[f] “M[otion] deficits” and “[t]he 10 [percent] award [July] 7[,] [2003] is duplicative of her previous R[ight] U[pper] E[xtremity] award. Therefore, there is 0 [percent] additional award as a result of this evaluation.”

By decision dated April 6, 2004, the Office denied modification of the August 5, 2003 schedule award for her upper right upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act⁷ and its implementing regulation⁸ sets 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 implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁹ Effective February 1, 2001, schedule awards are determined in accordance with the fifth edition of the A.M.A., *Guides*.¹⁰

ANALYSIS

On appeal, appellant’s representative contends that the Office erred in failing to award her an additional schedule award of 14 percent for her right upper extremity based upon the medical report of Dr. Swajian. The Board finds that the weight of the medical opinion evidence rests with the Office medical adviser’s opinion.

The relevant medical evidence includes the August 14, 2002 report by Dr. Swajian and reports dated July 7, 2003 and March 28, 2004 by the Office medical adviser. Dr. Swajian found

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404 (2003); see *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

¹⁰ FECA Bulletin No. 01-05 (issued January 29, 2001).

that appellant had a 34 percent permanent impairment of her right upper extremity. In reaching this determination, he utilized Table 16-11¹¹ to find that appellant had an 80 percent motor deficit impairment. He then multiplied this percentage “by combined motor and sensory deficits of 34 [percent] pursuant to on Table 16-13,”¹² which resulted in a 27 percent impairment of the right upper extremity based upon weakness. Next, he utilized Figure 16-43¹³ to find a 4.5 percent impairment based upon 85 degrees of abduction and a 5 percent impairment for right shoulder flexion of 105 degrees, resulting in a 10 percent impairment “due to rotator cuff injury with limited motion and weakness.” Dr. Swajian applied the Combined Values Chart¹⁴ to combine the 27 impairment rating for loss of motor strength and the 10 percent impairment for loss of range of motion to reach a total impairment of 34 percent for the right upper extremity.

Based upon a review of Dr. Swajian’s August 14, 2002 report, the Office medical adviser concluded that appellant had a 10 percent impairment of the right upper extremity. In reaching the impairment rating for the right upper extremity, the Office medical adviser found a 5 percent impairment due to 105 degrees of flexion and a 5 percent impairment for 85 degrees of flexion, which resulted in a total impairment for the right upper extremity of 10 percent based upon Figure 16-37 at page 474, Figure 16-40 at page 460, and Figure 16-46 at page 479. With regards to strength loss, the Office medical adviser stated that the fifth edition of the A.M.A., *Guides* prohibited combining strength loss and range of motion loss in determining impairment.

A principle stated by the fifth edition of the A.M.A., *Guides* is that “decreased strength cannot be rated in the presence of decreased motion.”¹⁵ (Emphasis in the original.) In reaching his impairment rating for the right upper extremity, Dr. Swajian combined both appellant’s strength loss and her loss of range of motion in determining that she had a 34 percent impairment of the right upper extremity or 14 percent increase in her impairment rating. In determining appellant’s sensory impairment, he utilized Tables 16-11 and 16-13. Table 16-11 is used to determine an impairment resulting from a peripheral nerve disorder and reference Table 16-13, which is used to determine the maximum impairment due to motor deficit for the spinal nerves. In his report, Dr. Swajian does not mention peripheral nerve damage or identify the spinal nerve injury. As no spinal or peripheral nerve has been identified by Dr. Swajian in his report, Tables 16-11 and 16-13 are not applicable to determine appellant’s permanent impairment. Moreover pursuant to Table 17-2, *Guides to the Appropriate Combination of Evaluation Methods*¹⁶ states impairments for peripheral nerve injury and muscle strength cannot be combined. The Office medical adviser determined that appellant had a 10 percent right upper extremity impairment based upon her loss of range of motion. He also noted that combining strength loss and loss of

¹¹ A.M.A., *Guides* at 484.

¹² *Id.* at 489.

¹³ *Id.* at 477.

¹⁴ *Id.* at 604

¹⁵ *Id.* at 16.8a, *Principles* at 508.

¹⁶ *Id.* at 526.

range of motion to determine an impairment rating was prohibited by the fifth edition of the A.M.A., *Guides*.

Since the Office medical adviser's determination of appellant's impairment is based on the examining physician's findings and complies with the A.M.A., *Guides*, the Office properly based its schedule award decision on the medical adviser's evaluation. There is no medical evidence of record, correctly based on the A.M.A., *Guides*, which establishes that appellant is entitled to an additional 14 percent impairment for her right upper extremity.

CONCLUSION

Appellant failed to establish that she was entitled to more than a 14 percent impairment of the right upper extremity which the Office had previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 6, 2004 and August 5, 2003 are hereby affirmed.

Issued: December 27, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member