

On June 5, 1996 Dr. Jonathan J. Paley, a Board-certified orthopedic surgeon, performed arthroscopic surgery on appellant's left shoulder, described as a subacromial decompression and debridement with major synovectomy. She returned to limited duty following surgery and, on May 28, 1998, the Office found that her limited-duty position represented her wage-earning capacity, resulting in no loss of wage-earning capacity.

On November 2, 1998 the Office issued appellant a schedule award for a 10 percent permanent impairment of the left arm and a 10 percent permanent impairment of the left leg. The schedule award was based upon limitations of knee and shoulder motion reported by Dr. Rudolf Hofmann, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion.

On March 31, 1999 appellant filed a claim for an additional schedule award. In a June 30, 1999 report, Dr. Paley indicated that appellant had a 25 percent permanent impairment based on decreased motion of her shoulder and knee and subjective complaints of pain in the shoulder, fingers and knee.

The Office referred appellant to Dr. Hofmann for another evaluation of her permanent impairment. In a September 10, 1999 report, he concluded that appellant had a 9 percent permanent impairment of the left arm due to restriction of shoulder motion, a 10 percent permanent impairment of the left leg due to limitation of knee flexion and no permanent impairment of the left hand, noting that her sensory deficit there was in a nonanatomic distribution. The Office sent Dr. Hofmann's report to Dr. Paley, who stated that he agreed appellant had reached maximum medical improvement, but felt she needed more supportive care and more work restrictions than Dr. Hofmann.

By decision dated October 18, 2000, the Office found that appellant had no additional permanent impairment beyond that for which she received a schedule award.

On October 28, 2000 appellant requested a review of the written record.

On January 10, 2001 the Office referred appellant, the case record and a statement of accepted facts to Dr. Ronald J. Moser, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion on her work tolerance limitations and treatment plan. In a report dated January 25, 2001, Dr. Moser concluded that appellant had no clinical residual associated with her knee or left finger, that the strains of these areas had resolved and that she had left shoulder residuals consisting of discomfort and decreased motion, which he detailed in degrees.

By decision dated June 4, 2003, an Office hearing representative found that another medical evaluation was necessary to determine appellant's permanent impairment, as no percentage was allotted for pain and no explanation was provided for not allotting any percentage for pain, Dr. Hofmann did not provide degrees of finger motion or grip strength scores and the report of Dr. Moser created a new conflict of medical opinion on whether appellant had residuals of her left knee and hand injury.

On July 8, 2003 the Office referred appellant, the case record and a statement of accepted facts to Dr. Edward Lim, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion on the extent of her permanent impairment. In a report dated August 8, 2003 he noted

appellant's complaints of left hand and finger tingling, left shoulder pain and tingling and giving out of the left leg. Examination of appellant's left shoulder revealed full forward flexion and external rotation, restriction of 10 degrees of internal rotation and 15 degrees of abduction and pain on extremes of elevation with a positive impingement sign. Dr. Lim found the left arm had no atrophy and normal grip strength, was neurologically and vascularly intact and exhibited no deficits of radial, median or ulnar nerve muscle strength. He reported no restriction of finger motion, no atrophy of the thighs or calves, no knee instability, slightly more valgus of the left knee and full range of motion of the left knee with complaints of pain on flexion of the left knee beyond 105 degrees. Dr. Lim concluded that appellant had no permanent impairment of the left hand and that the 10 percent impairment for each the left arm and the left leg appeared appropriate.

By decision dated October 9, 2003, the Office found that appellant had no more than a 10 percent permanent impairment of the left arm and a 10 percent permanent impairment of the left leg as previously awarded.

LEGAL PRECEDENT

The schedule award provision of the Act¹ and its implementing regulation² 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.

ANALYSIS

On November 2, 1998 the Office granted appellant a schedule award for a 10 percent permanent impairment of the left arm and a 10 percent permanent impairment of the left leg, which was based on restrictions of motion of her shoulder and knee. On March 31, 1999 appellant filed a claim for an increased schedule award and submitted a June 30, 1999 report from her attending Board-certified orthopedic surgeon, Dr. Paley, who estimated that appellant had a total of 25 percent permanent impairment based on the decreased motion of her shoulder and knee and on her subjective complaints of pain.

The Office referred appellant back to Dr. Hofmann, whose November 25, 1997 report was the basis of the November 2, 1998 schedule award. In a September 10, 1999 report, Dr. Hofmann stated that his examination of appellant on that date and her symptoms were "essentially identical" to his examination and her symptoms in November 1997. The Office

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

denied appellant's claim for an increased schedule award by decision dated October 18, 2000. That decision is not on appeal before the Board.³

Upon appellant's request for a review of the written record, an Office hearing representative, in a June 4, 2003 decision, found that another medical evaluation was necessary to determine appellant's permanent impairment, in part because no percentage was given for pain and no explanation provided for not allotting any percentage for pain. The Office then referred appellant to Dr. Lim, a Board-certified orthopedic surgeon, for evaluation of appellant's permanent impairment. In an August 8, 2003 report Dr. Lim noted that appellant complained of left shoulder pain and that examination showed "pain on the extremes of elevation with a positive impingement sign." Dr. Lim also noted "subjective pain complaints on flexion of the knee beyond 105 degrees."

The fifth edition of the A.M.A., *Guides* provides specific procedures and a grading scheme for determining impairment of an upper extremity⁴ and of a lower extremity⁵ due to pain. Despite descriptions of pain in the reports of each physician who examined appellant, no attempt was made to rate such pain using the A.M.A., *Guides*. The case will be remanded to the Office for such a rating⁶ and for a decision on appellant's entitlement to an increased schedule award.

CONCLUSION

The case is not in posture for a decision due to the absence of a rating for pain reported by all examining physicians.

³ The Board's jurisdiction is limited by 20 C.F.R. § 501.3 to review of decisions issued within one year before the date of the filing of an appeal.

⁴ Section 16.5, page 480-97.

⁵ Section 17.21, page 550-3.

⁶ See *Kenneth Tappen*, 49 ECAB 334 (1998); *John J. Kato*, 40 ECAB 998 (1989).

ORDER

IT IS HEREBY ORDERED THAT the October 9, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: September 13, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
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