

FACTUAL HISTORY

This case was before the Board on a prior appeal.¹ The Board's February 12, 2003 decision and order recites the facts of the case up to that point and are hereby incorporated by reference. To summarize briefly, appellant sustained a traumatic injury to his left shoulder on November 12, 1995 which was accepted for left shoulder impingement and arthroscopic surgery was performed on June 11, 1996. He filed a claim for a schedule award and the Office issued schedule awards for six percent permanent impairment of the left arm on December 29, 1999 and for an additional seven percent impairment of the left arm on May 17, 2002. The second schedule award was based on an Office medical adviser's review of a December 3, 2001 report from Dr. Weiss.

In a February 12, 2003 decision, the Board found that the case was not in posture for a decision because the Office medical adviser failed to sufficiently explain how he reached his assessment of zero percent for pain for which Dr. Weiss had assigned a three percent impairment in a December 3, 2001 report. On remand an Office medical adviser reviewed Dr. Weiss' December 3, 2001 report and stated, in a May 1, 2003 note, as follow:

“Add three percent for pain as per the fifth edition of the American Medical Association, *Guides [to the Evaluation of Permanent Impairment,]* [p]age 574 Fig[ure] 18-1. I originally felt that the 13 percent impairment should include the pain but the A.M.A., *Guides*, state quite clearly that[,] if the pain even [increases] the burden of the individual's condition even slightly 3 percent can be added.

“New assessment 16 percent of the upper extremity l[ef]t.”

On June 24, 2003 the Office issued appellant a schedule award for an additional 3 percent permanent impairment of the left arm for a total of 16 percent impairment. Counsel requested a hearing at which he contended that there was a conflict of medical opinion between Dr. Weiss, who found a 30 percent impairment in the December 3, 2001 report, and the Office medical adviser, who concluded that this report showed a 16 percent impairment. By decision dated April 7, 2004, an Office hearing representative found that the weight of the medical evidence failed to establish that appellant had more than a 16 percent impairment of the left arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ 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,

¹ Docket No. 02-2060 (issued February 12, 2003).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

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

The only point of contention on appeal is the percentage of impairment of appellant's left arm that should be assigned for his June 11, 1996 surgery. The other impairments reported by Dr. Weiss in his December 3, 2001 report -- three percent for loss of motion and three percent for pain -- were assigned these same percentages by an Office medical adviser for which the Office issued schedule awards on May 17, 2002 and June 24, 2003. The only difference between Dr. Weiss' 30 percent impairment and an Office medical adviser's 16 percent impairment is that Dr. Weiss assigned a 24 percent impairment for appellant's June 11, 1996 arthroplasty and an Office medical adviser assigned 10 percent for this surgery.

There is no disagreement on what table of the fifth edition of the A.M.A., *Guides* should be used to rate this impairment. Dr. Weiss and an Office medical adviser both referred to Table 16-27, titled "Impairment of the Upper Extremity After Arthroplasty of Specific Bones or Joints." For appellant's left shoulder arthroplasty, Dr. Weiss assigned, without any explanation, 24 percent impairment, which is the percentage provided in Table 16-27 for a total shoulder implant arthroplasty. This is not the surgery appellant underwent on June 11, 1996. The only arthroplasty described in the June 11, 1996 operative report was an acromioplasty, which involved a partial resection of the acromion and is far less than a total shoulder arthroplasty. The Office medical adviser was correct in pointing out, in a May 9, 2002 note, that Dr. Weiss' assignment of a 24 percent impairment for appellant's June 11, 1996 surgery was incorrect.

The Office medical adviser, however, was incorrect in assigning 10 percent for the acromioplasty. As noted, a partial acromionectomy or acromioplasty is not listed in Table 16-27. The Office medical adviser's assignment of 10 percent, the same percentage listed in this table for a distal clavicle arthroplasty, seems equitable, as it is provided for the same procedure to the bone adjoining the acromion, the clavicle. However, as the acromion is not listed in Table 16-27 or elsewhere in the A.M.A., *Guides*, a schedule award cannot be issued for an arthroplasty involving this bone. With no percentage properly assignable to the surgery, all that is left is the three percent for loss of motion and the three percent for pain reported in Dr. Weiss' December 3, 2001 report. This report shows a six percent permanent impairment of appellant's left arm.

CONCLUSION

The medical evidence shows that appellant has no more than a six percent permanent impairment of his left arm as provided under the A.M.A., *Guides*.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2004 decision of the Office of Workers' Compensation Programs' hearing representative is modified to reflect that appellant has a six percent impairment of his left arm and affirmed as modified.

Issued: January 21, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member