

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGIE L. FRANCE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, OH

*Docket No. 03-1295; Submitted on the Record;
Issued September 12, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than an 18 percent impairment of her right upper extremity, for which she received schedule awards.

On April 3, 1989 appellant, a 47-year-old nursing assistant, filed a traumatic injury claim alleging that she injured her right shoulder while assisting a resident to get dressed. The Office of Workers' Compensation Programs accepted the claim for right shoulder strain, fibromyositis and authorized a Mumford surgical procedure on the right shoulder.

On October 29, 1993 the Office awarded appellant a schedule award for a 13 percent impairment of her right upper extremity. In a decision dated March 24, 1995, the Office awarded appellant an additional schedule award for a 4 percent impairment of the right upper extremity, a total of 17 percent.

On September 26, 2002 appellant filed a claim for compensation for an increase in her schedule award (Form CA-7).

By letter dated October 21, 2002, the Office referred appellant to Dr. Richard J. Watkins, a Board-certified orthopedic surgeon, for a second opinion. Regarding range of motion in the right shoulder, the physician found that appellant had 50 degrees flexion, 30 degrees extension, 50 degrees abduction, 30 degrees adduction, 90 degrees for internal rotation and 30 degrees of external rotation. In an opinion dated November 21, 2002, Dr. Watkins concluded that appellant had a 19 percent impairment¹ of the right upper extremity. In support of this finding, he stated:

“I find nine percent impairment for flexion, one percent impairment for extension. For abduction/adduction, page 477, Figure 16-43, I find six percent for abduction and one percent for adduction. For internal and external rotation, page 479,

¹ This appears to be a mathematical error since the percentages noted by Dr. Watkins total 18 percent not 19 percent.

Figure 16-46, I find zero percent for internal rotation and one percent for external rotation.”

Dr. Watkins noted that appellant had no decrease in strength, no anklyosis, no atrophy and no sensory changes.

On December 19, 2002 the Office requested that Dr. Andrea Young, an Office medical adviser, provide an estimate of permanent impairment for appellant. In an opinion dated December 30, 2002, the Office medical adviser concluded that appellant had a total of 18 percent permanent impairment of her right upper extremity. In reaching this conclusion, Dr. Young noted that appellant was entitled to a 9 percent impairment for 50 degrees of flexion,² 1 percent impairment for 30 degrees of extension,³ 6 percent impairment for 50 degrees of abduction,⁴ 1 percent impairment for 30 degrees adduction,⁵ 0 percent for 90 degrees of internal rotation,⁶ and 1 percent impairment for 30 degrees of external rotation,⁷ which totaled an 18 percent impairment of the right upper extremity. She noted that appellant had previously been awarded a schedule award for a 17 percent permanent impairment and would be entitled to an additional 1 percent impairment.

By decision dated February 4, 2003, the Office issued appellant a schedule award for an additional 1 percent impairment for her right upper extremity, for a total of 18 percent.

The Board finds that appellant has no more than an 18 percent impairment of her right upper extremity, for which she received schedule awards.

Section 8107 of the Federal Employees’ Compensation Act⁸ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.⁹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.¹⁰ The Act’s implementing regulation has adopted

² Table 16-40, page 476.

³ *Id.*

⁴ Table 16-43, page 477.

⁵ *Id.*

⁶ Table 16-46, page 479.

⁷ *Id.*

⁸ 5 U.S.C. §§ 8101-8109.

⁹ 5 U.S.C. § 8107.

¹⁰ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.¹¹

In the instant case, appellant had previously received schedule awards totaling a 17 percent impairment of her right upper extremity. Based upon the reports of Dr. Watkins and the Office medical adviser, the Office issued appellant an additional one percent impairment for her right upper extremity. Both Dr. Watkins and the Office medical adviser determined that pursuant to Figure 16-46, page 479, appellant's internal rotation of 90 degrees and external rotation of 30 degrees equaled 0 percent and 1 percent, respectively; pursuant to Figure 16-40, page 476, appellant's flexion of 50 degrees and extension of 30 degrees equaled 9 percent and 1 percent, respectively; and pursuant to Figure 16-43, appellant's abduction of 50 degrees and adduction of 30 degrees equaled 6 percent and 1 percent, respectively. The total range-of-motion impairments equaled 18 percent impairment to the right upper extremity. No physician found that appellant has a more than 18 percent impairment of her right upper extremity. Both Dr. Watkins and Office medical adviser properly applied the A.M.A., *Guides* to the physical findings. There is no evidence in the record establishing that appellant has more than an 18 percent impairment to her right upper extremity. The medical evidence does not support any greater impairment than that for which she has received awards.

The February 4, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹¹ 20 C.F.R. § 10.404.