

benefits for a 29 percent whole person functional impairment under K.S.A. 44-510e. In the alternative, claimant suggests the Board should average Dr. Geis' rating with the six percent whole person functional impairment rating provided by Dr. Daniel J. Prohaska and, thus, award her benefits for a 17.5 percent whole person functional impairment.

Conversely, respondent and its insurance carrier contend the October 14, 2004, Award should be affirmed. They argue Dr. Prohaska's six percent whole person functional impairment rating is the more credible. Consequently, they are content with the Judge's findings and the resulting Award.

The only issue before the Board on this appeal is the extent of claimant's whole person functional impairment as rated under the *AMA Guides* (4th ed.).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

Claimant injured her shoulders working for respondent as an auditor, which required a lot of pushing and lifting. The parties stipulated claimant's injuries arose out of and in the course of her employment with respondent. The parties also agreed July 3, 2002, was the appropriate date of accident for claimant's bilateral shoulder injuries.

Claimant ultimately received medical treatment from Dr. Daniel J. Prohaska, an orthopedic surgeon in Wichita, Kansas. The doctor first operated on claimant's left shoulder on January 27, 2003, and later operated on her right shoulder on July 14, 2003. Despite those surgeries, claimant experiences pain when lifting above shoulder-level.

As claimant has returned to work for respondent earning at least 90 percent of her pre-injury wage, the parties agree claimant's permanent disability benefits are limited to her whole person functional impairment rating.¹

At claimant's attorney's request, Dr. Dick Geis evaluated claimant for purposes of this claim. The doctor, who is board-certified in occupational medicine and also certified by the American Board of Independent Medical Examiners, examined claimant in late January 2004. The doctor diagnosed bilateral shoulder impingement syndrome and bilateral rotator cuff tears for which claimant had undergone bilateral arthroscopic subacromial decompression with rotator cuff repair.

Using Table 27 of the *AMA Guides* (4th ed.), Dr. Geis concluded claimant sustained a 24 percent functional impairment to each upper extremity due to her surgeries, which the

¹ See K.S.A. 44-510e.

doctor concluded should be considered and rated as total shoulder arthroplasties. Dr. Geis testified, in part:

Yes, I'm -- I think she had a subacromial, and I think they took -- as opposed to taking off the end of the collar bone in her case, they took off the underside of the acromion process which articulates with the collar bone. What they did in her case served the same purpose as removal of the distal clavicle, and then they did the repair of the rotator cuff. And that's -- that additional part is what made me use the total shoulder arthroplasty as opposed to distal clavicle resection.²

Dr. Geis generally rates a shoulder impairment as a total shoulder arthroplasty under Table 27 of the *Guides* whenever a shoulder surgery entails more than merely resecting the distal clavicle. And in this instance, the surgery also included bilateral rotator cuff repair.

Considering the additional impairment due to the lost range of motion in both shoulders, the doctor determined claimant sustained a 29 percent whole person functional impairment due to her bilateral shoulder injuries.

The other medical opinion in the record addressing claimant's functional impairment is from the treating surgeon, Dr. Prohaska. The doctor performed a subacromial decompression on both of claimant's shoulders, which entailed removing bone from the acromions that had rubbed and had torn the rotator cuff tendons. The doctor also repaired the torn tendons. On December 16, 2003, the doctor released claimant from treatment.

Unlike Dr. Geis, Dr. Prohaska did not use Table 27 from the *Guides* as he did not believe the subacromial decompressions and rotator cuff repairs comprised either distal clavicle or total shoulder arthroplasties. Despite finding no loss of range of motion, Dr. Prohaska testified he rated claimant as having a six percent whole person functional impairment using the *Guides*' "range of motion charts."³ The doctor later explained the *Guides* does not specifically address subacromial decompressions and rotator cuff repairs and, therefore, he used the *Guides* merely as a reference source in analyzing claimant's functional impairment in light of his experience and training.

Dr. Geis and Dr. Prohaska could not agree as to what comprised a shoulder arthroplasty. Moreover, the testimony in this claim indicates the *Guides* (4th ed.) does not define that term.

The Board is not persuaded that either doctor's opinion regarding claimant's functional impairment is more persuasive or more accurate than the other. Accordingly, the Board averages the six percent and 29 percent whole person impairment ratings and

² Geis Depo. at 13.

³ Prohaska Depo. at 9.

finds that claimant has sustained a 17.5 percent whole person impairment due to the bilateral shoulder injuries she sustained working for respondent.

In summary, the October 14, 2004, Award should be modified to grant claimant a 17.5 percent permanent partial general disability under K.S.A. 44-510e.

AWARD

WHEREFORE, the Board modifies the October 14, 2004, Award and grants claimant benefits for a 17.5 percent permanent partial general disability.

Janette L. Sanders is granted compensation from Footlocker and its insurance carrier for a July 3, 2002, accident and resulting disability. Based upon an average weekly wage of \$488.83, Ms. Sanders is entitled to receive 5.14 weeks of temporary total disability benefits at \$325.90 per week, or \$1,675.13, plus 72.63 weeks of permanent partial general disability benefits at \$325.90 per week, or \$23,670.12, for a 17.5 percent permanent partial general disability, making a total award of \$25,345.25, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of June, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Jeff K. Cooper, Attorney for Claimant
- Michael P. Bandre, Attorney for Respondent and its Insurance Carrier
- Bryce D. Benedict, Administrative Law Judge
- Paula S. Greathouse, Workers Compensation Director