

the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment (AMA Guides)* (4th ed.).

Dr. Daniel J. Prohaska, who treated claimant and operated on claimant's right shoulder, rated claimant as having a five percent permanent functional impairment to his right upper extremity but the doctor found no permanent impairment in the left upper extremity. On the other hand, claimant's expert medical witness, Dr. Pedro A. Murati, rated claimant as having a 10 percent right upper extremity impairment (or six percent to the whole person) and a two percent left upper extremity impairment (or one percent to the whole person), which combine for a seven percent impairment to the whole person.

Giving weight to both doctors' ratings, Judge Clark concluded claimant sustained a three percent functional impairment to the whole person. Consequently, the Judge granted claimant benefits for a three percent permanent partial general disability under K.S.A. 44-510e.

Claimant contends Judge Clark erred. First, claimant argues that Dr. Murati's opinions are more persuasive and, therefore, the Board should award claimant permanent disability benefits for a seven percent whole person impairment. In the alternative, claimant argues the doctors' ratings should be averaged and, accordingly, the Board should find claimant has sustained a five percent whole person impairment.

Conversely, respondent requests the Board to award claimant permanent disability benefits under K.S.A. 44-510d for a right upper extremity impairment only. Respondent argues Dr. Prohaska's opinions regarding claimant's permanent functional impairment are more persuasive because (1) he was claimant's treating physician and (2) claimant allegedly did not complain about any left shoulder symptoms until approximately six weeks before the doctor released him from treatment. In summary, respondent contends claimant should be awarded benefits under K.S.A. 44-510d, the scheduled injury statute, for a five percent disability to the right upper extremity at the shoulder level.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The parties agree claimant injured his right shoulder working in respondent's meat packing plant stacking boxes of meat weighing 10 to 30 pounds. The parties also agree

claimant's accidental injury arose out of and in the course of his employment with respondent.

Claimant began experiencing symptoms in his right shoulder in mid-March 2003. As he continued to perform his regular job duties, claimant then began experiencing symptoms in his left shoulder. The Judge used March 15, 2003, as the appropriate date of accident for this repetitive trauma injury and neither party challenges that date on this appeal. Accordingly, March 15, 2003, will be utilized as the date of accident for these alleged injuries for purposes of computing claimant's workers compensation benefits.

Claimant reported his right shoulder symptoms to respondent's nursing department. When his left shoulder symptoms began, he also reported those. Claimant received treatment from respondent's nursing department until July 31, 2003, when Dr. Daniel J. Prohaska, an orthopedic surgeon, began treating him.

When medications, injections, and physical therapy failed to resolve claimant's right shoulder symptoms, the doctor performed an arthroscopy in November 2003 to repair a superior labral tear. In February 2004, when claimant advised the doctor of similar left shoulder symptoms, the doctor initially suspected a similar tear in the left shoulder. But an MRI-arthrogram did not confirm that diagnosis. Accordingly, the doctor treated claimant's left shoulder for an impingement-type syndrome.

On April 27, 2004, Dr. Prohaska released claimant from medical treatment with restrictions against lifting more than 25 pounds overhead. According to a document the doctor completed on that date, the doctor designated those restrictions as "final" and also indicated they pertained to both upper extremities.² When claimant testified at his October 11, 2004, regular hearing, he had ongoing problems with his shoulders but he was continuing to work for respondent on a somewhat slower line handling lighter boxes.

The record contains two medical opinions regarding the nature and extent of claimant's injuries. Dr. Prohaska concluded claimant sustained no impairment to the left upper extremity or shoulder and a five percent impairment to the right upper extremity under the *AMA Guides* (4th ed.) due to claimant's lost range of motion.³ The doctor found a five-degree loss of flexion in claimant's left shoulder but he did not believe the *Guides* rated that deficit as the doctor understood the *Guides* to require a 10-degree loss to justify an impairment rating.⁴

² Prohaska Depo., Ex. 2.

³ Prohaska Depo. at 14.

⁴ *Id.* at 15.

On the other hand, Dr. Pedro A. Murati, whom claimant hired to provide an opinion in this claim, examined claimant in early July 2004 and diagnosed right shoulder pain, status-post superior labrum anterior to posterior type II repair; left shoulder pain secondary to overuse; and myofascial pain syndrome at the level of the right shoulder girdle.⁵

Dr. Murati concluded that under the *AMA Guides* (4th ed.) claimant sustained a 10 percent right upper extremity impairment (or six percent whole person impairment), plus a two percent left upper extremity impairment (or one percent whole person impairment). The doctor combined those ratings and concluded claimant sustained a seven percent whole person functional impairment due to the bilateral shoulder injuries he sustained while working for respondent. Dr. Murati found impingement in claimant's right shoulder but none in the left, found moderate crepitus in claimant's right shoulder but noted none in the left, and, finally, found tenderness in the right sternoclavicular joint but none in the left. Consequently, Dr. Murati's left shoulder impairment rating was based upon lost range of motion only. And according to Dr. Murati, claimant reached only 150 degrees of flexion in his left shoulder whereas the *Guides* indicates 180 degrees is normal.

As indicated above, Judge Clark gave some, but not equal, weight to both doctors' opinions concluding claimant sustained a three percent whole person functional impairment. The Board finds no persuasive reason to disturb that finding. The Board agrees that claimant injured both shoulders and, therefore, his permanent disability benefits are governed by K.S.A. 44-510e. The three percent whole person functional impairment rating falls within the range of impairment as indicated by the doctors and is reasonable in light of the medical testimony. Accordingly, the February 23, 2005, Award should be affirmed.

The Board adopts the findings and conclusions set forth in the Award that are not inconsistent with the above.

AWARD

WHEREFORE, the Board affirms the February 23, 2005, Award entered by Judge Clark.

IT IS SO ORDERED.

⁵ Murati Depo., Ex. 2 at 2.

Dated this ____ day of June, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Lawrence M. Gurney, Attorney for Claimant
- Michael D. Streit, Attorney for Respondent and its Insurance Carrier
- John D. Clark, Administrative Law Judge
- Paula S. Greathouse, Workers Compensation Director