

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH F. ROBINSON and DEPARTMENT OF THE NAVY,
UNDERSEA WARFARE CENTER, New London, Conn.

*Docket No. 95-2059; Submitted on the Record;
Issued June 2, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than 10 percent impairment of his right upper extremity for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds the case not in posture for decision.

Appellant filed a claim on July 16, 1993 alleging that he slipped in the performance of duty and injured his right shoulder and hip. The Office of Workers' Compensation Programs accepted appellant's claim for contusion right shoulder and right hamstring on September 22, 1993. The Office also accepted right shoulder impingement and right acromioplasty. Appellant requested a schedule award on September 27, 1994 and by decision dated April 6, 1995, the Office granted appellant a schedule award for 10 percent permanent impairment of his right upper extremity.

Section 8107 of the Federal Employees' Compensation Act¹ provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guide to the Evaluation of Permanent Impairment*² as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

¹ 5 U.S.C. §§ 8101-8193, 8107.

² A.M.A., *Guides* (4th ed. 1993).

³ A. George Lampo, 45 ECAB 441, 443 (1994).

In this case, appellant's attending physician, Dr. W.N. Jones, a Board-certified orthopedic surgeon, completed a report on September 29, 1994 and found that appellant had reached maximum medical improvement. Dr. Jones found that appellant had limited range of motion including flexion to 60 degrees, an 8 percent impairment under the A.M.A., *Guides*⁴ abduction to 30 degrees, a 7 percent impairment,⁵ external rotation to 20 degrees, 1 percent impairment,⁶ and internal rotation to 60 degrees, a 2 percent impairment.⁷ He also noted localized tenderness over the operative site. Dr. Jones concluded that appellant had 25 percent permanent impairment of his right upper extremity.

The Office referred appellant for a second opinion evaluation with Dr. Malcolm Edgar, a Board-certified orthopedic surgeon, to determine the permanent impairment of appellant's right upper extremity. In a report dated February 20, 1995, Dr. Edgar found that appellant had reached maximum medical improvement, that he retained internal rotation to 40 degrees, for 3 percent impairment⁸ and that he retained external rotation to 80 degrees which is not a ratable impairment under the A.M.A., *Guides*.⁹ Dr. Edgar found appellant retained abduction to 120 degrees for a 3 percent impairment and adduction to 40 degrees which is not a ratable impairment in accordance with the A.M.A., *Guides*.¹⁰ He found appellant had flexion to 130 degrees for 3 percent impairment and extension of 40 degrees for 1 percent impairment.¹¹ Dr. Edgar stated: "Using the A.M.A., *Guides* in reference to his right shoulder motion restrictions, I rate him as having a permanent physical impairment equivalent to 10 percent of his right upper limb and that rating is given in consequence of the injury of July 16, 1993."

The Board finds that there is a conflict of medical opinion evidence between Dr. Jones, appellant's attending physician, who found appellant had permanent impairment of 25 percent and Dr. Edgar, the Office referral physician, who found that appellant had permanent impairment of 10 percent. Section 8123(a) of the Federal Employees' Compensation Act,¹² provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." On remand the Office should refer appellant, a statement of accepted facts and list of specific questions to an appropriate Board-certified specialist to determine the percentage of permanent impairment of appellant's right upper extremity and issue an appropriate decision.

⁴ A.M.A., *Guides*, 43, figure 38.

⁵ *Id.* at 44, figure 41.

⁶ *Id.* at 45, figure 44.

⁷ *Id.*

⁸ *Id.* at 45, figure 44.

⁹ *Id.*

¹⁰ A.M.A., *Guides*, 44, figure 41.

¹¹ *Id.* at 43, figure 38.

¹² 5 U.S.C. §§ 8101-8193, 8123(a).

The decision of the Office of Workers' Compensation Programs dated April 6, 1995 is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
June 2, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member