

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES H. KONGS and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, Okla.

*Docket No. 96-1869; Submitted on the Record;
Issued June 5, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has more than an 18 percent permanent impairment of his right upper extremity for which he received a schedule award.

On July 15, 1993 appellant, then a 39-year-old letter carrier, filed a claim for traumatic injury alleging that on that date he injured his right shoulder when he tried to catch some falling mail. On August 17, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for right shoulder strain and subsequently approved appellant's July 11, 1994 arthroscopic superior labral debridement and distal clavicle excision.

On January 10, 1995 appellant's treating physician, Dr. J. Calvin Johnson, a Board certified orthopedic surgeon, assessed appellant's upper extremity disability at 20 percent and discharged him from his care.

On April 11, 1995 appellant filed a claim for a schedule award.

By letter dated May 4, 1995, the Office requested that Dr. Johnson provide a permanent partial impairment rating of appellant's right upper extremity, utilizing the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a report dated May 9, 1995, Dr. Johnson stated that appellant reached maximum medical improvement on January 10, 1995 and that although appellant's shoulder movement was not restricted, he should refrain from excessive overhead movement and lifting more than 40 pounds. The physician noted that appellant complained of some looseness in the shoulder joint, which was a new symptom. Dr. Johnson concluded that the percentage of impairment was rated at 25 percent, utilizing the fourth edition of the A.M.A., *Guides*. Dr. Johnson did not reference any specific page numbers, tables or figures in the A.M.A., *Guides*.

On September 12, 1995 on the advice of the Office medical adviser, the Office requested that Dr. Johnson submit a supplemental report to include a description, location, and severity of any pain about appellant's right shoulder and measurements of the six motions of the shoulder.

In a report dated September 26, 1995, Dr. Johnson responded to the Office's request for additional information. Dr. Johnson stated that appellant's pain was both posterior and anterior and that appellant had a feeling of instability of the shoulder. Dr. Johnson gave the measurements of the six planes of motion as follows:

"Measurement of the six planes of motion show the forward flexion is 160 on the right compared with 180 on the left. Abduction is 150 on the right compared to 150 on the left. Internal rotation is measured to L2 on the right compared to T7 on the left. External rotation is measured at 80 degrees bilaterally. Extension is measured at 45 degrees bilaterally. Scapular protraction is symmetric on both shoulders. Adduction of the shoulder is symmetric and ability to touch the opposite shoulder. Other pertinent positives include a positive sulcus sign which is consistent with multi-directional instability and functional impairment."

By report dated February 27, 1996, an Office medical adviser reviewed the figures provided by Dr. Johnson in conjunction with the fourth edition of the A.M.A., *Guides* and, based on the figures provided by Dr. Johnson, determined that pursuant to page 48, Table 11 of the A.M.A., *Guides*, appellant had "grade three" pain which equated to a 3 percent permanent partial impairment, and that pursuant to page 61, Table 27, appellant's distal clavicle resection equated to a 10 percent permanent impairment. In addition, pursuant to page 43, Figure 38 and page 44, Figure 41 of the A.M.A., *Guides*, the Office medical adviser determined that the range of motion measurements of provided by Dr. Johnson equated to a 1 percent impairment each for loss of flexion, extension and abduction, and a 2 percent impairment for loss of internal rotation, for a total of a 5 percent permanent impairment for loss of range of motion. Adding the 5 percent rating to the percentages derived for appellant's pain and surgery, the Office medical adviser determined that appellant had an 18 percent permanent impairment of the right upper extremity.

By decision dated March 12, 1996, the Office granted appellant a schedule award for an 18 percent permanent impairment of the right upper extremity for the period January 10, 1995 to February 7, 1996, for a total of 56.16 weeks of compensation.

The Board finds that appellant has no more than an 18 percent permanent impairment of the right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimant's seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989); *Francis John*

In the present case, Dr. Johnson, appellant's attending physician, stated in his January 10, 1995 report that appellant had a 20 percent permanent disability of the right upper extremity. In his report dated May 9, 1995, however, he increased this disability rating to 25 percent, but did not offer any explanation for the increase. In addition, while Dr. Johnson stated in his May 9, 1995 report that his determination was based on the A.M.A., *Guides* and while he provided the measured values for the six planes of shoulder motion in his September 26, 1995, report, neither report referenced any specific portion of the A.M.A., *Guides*, nor contained any explanation of how he arrive at the disability ratings given.

The Board has held that when an attending physician's report gives an estimate of permanent impairment but is not based on a proper application of the A.M.A., *Guides*, the Office may follow the advice of its medical advisor if he or she has properly used the A.M.A., *Guides*.⁴ The Board concludes that in the present case the Office medical adviser properly applied the A.M.A., *Guides* to the description of the impairment provided by Dr. Johnson. There is no other evidence of record that appellant has greater than an 18 percent permanent loss of use of his right upper extremity for which he has received a schedule award.

The decision of the Office of Workers' Compensation Programs dated March 12, 1996 is affirmed.

Dated, Washington, D.C.
June 5, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Kilcoyne, 38 ECAB 168, 170 (1986).

⁴ *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).