

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LENO J. TORELLI and U.S. POSTAL SERVICE,
POST OFFICE, Guilford, Conn.

*Docket No. 96-2614; Submitted on the Record;
Issued March 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has greater than a three percent permanent impairment of the right upper extremity for which he received a schedule award.

The Board has duly reviewed the case record in the present appeal and finds that appellant has no greater than a three percent permanent impairment of the right upper extremity for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³

Section 8107 of the Act 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.⁴ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office of Workers' Compensation Programs.⁵ For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

⁵ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁶

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."⁷ This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁸

On December 14, 1993 appellant, then a 50-year-old letter carrier, sustained a right rotator cuff tear in the performance of duty when he fell on some stairs. He underwent surgery on January 5, 1995 and returned to light-duty work on February 6, 1995.

In a report dated December 1, 1995, Dr. Norman R. Kaplan, a Board-certified orthopedic surgeon, stated his opinion that appellant had reached maximum medical improvement in his right shoulder but experienced pain on a daily basis in the right deltoid area. His diagnosis was a significant cervical spasm with radiculopathy due to a right central C4-5 herniated nucleus pulposus and C5-6 degenerative disc disease with right foraminal encroachment. Dr. Kaplan opined that appellant's cervical problem predated his December 1993 employment injury but that his shoulder problem was caused by the employment injury. He stated his opinion that appellant had a 15 percent permanent disability due to his 1993 employment injury but he did not explain how he had arrived at this determination.

In a memorandum dated January 29, 1996, an Office medical consultant stated that the medical record did not explain whether appellant's right shoulder pain was secondary to a herniated disc rather than to his work-related shoulder injury. He stated that Dr. Kaplan needed to explain whether the right shoulder pain was radicular in nature and also needed to quantitate the pain.

By letter dated February 9, 1996, the Office asked Dr. Kaplan to provide a supplemental report.

In a report dated March 15, 1996, Dr. Kaplan stated his opinion that appellant's pain was due both to foraminal encroachment at C5-6 and to his infraspinatus tear at the shoulder. He

⁶ *Luis Chapa, Jr.*, 41 ECAB 159 (1989).

⁷ Federal (FECA) Procedure Manual, Part -- 2 Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); see *John H. Smith*, 41 ECAB 444, 448 (1990).

⁸ *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

stated, "If I had to say how much of his problem is due to the shoulder and how much is due to the neck, I would say i[t]s 50/50. [Appellant's] pain at this point is moderate in nature."

In a letter dated May 13, 1996, the Office medical consultant noted that Dr. Kaplan, in his March 15, 1996 note, stated that 50 percent of appellant's pain was secondary to primary shoulder pathology and he described the pain as moderate in intensity. He stated that, according to the A.M.A., *Guides* (4th ed. 1993), at page 51 appellant had a maximum of 13 percent impairment of the upper extremity due to pain and that, since Dr. Kaplan described the contribution of the shoulder as 50 percent of moderate pain,⁹ he felt that appellant fell into the Grade 2 classification according to Table 11 at page 48. Dr. Levine stated that this classification allowed a maximum of 25 percent of the sensory impairment for a 3 percent upper extremity impairment (.25 times 13 percent).

By decision dated May 20, 1996, the Office granted appellant a schedule award for 9.36 weeks based upon a 3 percent permanent impairment of the right upper extremity.

The Board finds that appellant sustained no greater than a three percent permanent impairment of the right upper extremity for which he received a schedule award.

In this case, the Office medical adviser properly applied Dr. Kaplan's findings to Table 13 at page 51 of the 4th edition of the A.M.A., *Guides* which provides for a maximum 13 percent impairment of the upper extremity due to sensory deficit or pain at the C5-6 level of the spine and Table 11 at page 48 which provides for a maximum 25 percent impairment for a Grade 2 sensory deficit or pain described as "[d]ecreased sensibility with or without abnormal sensation or pain, which is forgotten during activity" in concluding that appellant had a 3 percent impairment of the right upper extremity (.25 times 13 percent). As the Office medical adviser's report provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.¹⁰ There is no medical evidence, based on proper application of the A.M.A., *Guides*, which establishes that appellant has greater than a three percent permanent impairment.¹¹

The May 20, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 1, 1999

⁹ As noted above, Dr. Kaplan had opined that appellant's cervical problem predated his employment injury.

¹⁰ See *Michael C. Norman*, 42 ECAB 768 (1991); *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

¹¹ Although Dr. Kaplan had opined that appellant had a 15 percent impairment of the right upper extremity, he did not explain how he arrived at this determination.

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member