

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HECTOR QUILES-CLASS and DEPARTMENT OF THE AIR FORCE,
DAVIS MONTHAN AIR FORCE BASE, Tucson, Ariz.

*Docket No. 97-2649; Submitted on the Record;
Issued May 26, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained greater than a nine percent impairment of his right upper extremity, for which he received a schedule award.

The Office of Workers' Compensation Programs accepted that on December 9, 1993 appellant, then a 41-year-old heavy mobile equipment mechanic, sustained a right shoulder strain and rupture of the biceps tendon while moving a water pump housing off a water tanker.¹ He missed worked intermittently through January 1994, and claimed a schedule award on August 19, 1996.

Appellant submitted periodic reports from Dr. R. Mark Blew, an attending orthopedic surgeon, from December 17, 1993 to May 24, 1996, providing a history of injury, and diagnosing a "complete rupture of the short head of [the] biceps tendon," causing a "Popeye muscle deformity," pain and weakness. In a May 20, 1994 report, Dr. Blew estimated a 12 percent permanent impairment of the right upper extremity due to pain, weakness and muscle deformity caused by the biceps tendon rupture, but did not explain the basis for this percentage by referring to specific portions of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) (hereinafter, "the A.M.A., *Guides*").

In a May 24, 1996 report, Dr. Blew found appellant's right shoulder condition permanent and stationary, noting that the biceps tendon rupture caused a "Popeye muscle deformity," "marked retraction of the biceps," cramping, occasional pain, weakness, right elbow symptoms, and "slightly decreased range of motion of both the shoulder and the elbow on the right side." Dr. Blew found a forward flexion of the right shoulder of 175 degrees, 170 degrees abduction, 20 degrees external rotation, a 10 degree flexion contracture of the right elbow, and slight weakness

¹ The record indicates that appellant also filed claims for an August 25, 1988 right knee injury (Claim No. A13-857788) and a September 12, 1990 elbow and forearm contusion (Claim No. A13-932928). These two claims are not before the Board on the present appeal.

of the right biceps. Dr. Blew assessed a ten percent permanent impairment of the right upper extremity due to mild weakness, deformity and loss of range of motion. However, Dr. Blew did not refer to specific portions of the A.M.A., *Guides* in making this evaluation.

The Office referred Dr. Blew's May 24, 1996 report to an Office medical adviser for determination of a percentage of permanent impairment to be used in calculating a schedule award. In an August 2, 1996 report, an Office medical adviser reviewed Dr. Blew's May 24, 1996 report, noting a date of maximum medical improvement of May 24, 1996. The Office medical adviser found that according to figure 38, page 43 of the A.M.A., *Guides*, entitled "Upper Extremity Impairments Due to Lack of Flexion and Extension of the Shoulder," a limitation of shoulder flexion to 175 degrees equaled a 1 percent impairment of the right arm. According to figure 44, page 45, entitled "Upper Extremity Impairments Due to Lack of Internal and External Rotation of Shoulder," a limitation of external rotation of the shoulder to 20 degrees equaled a 1 percent impairment of the right arm. According to figure 32, page 40, entitled "Upper Extremity Impairments Due to Lack of Flexion and Extension of the Elbow Joint," a 10 degree flexion contracture of the elbow also equaled a 1 percent impairment of the right arm. The medical adviser then added these percentages to equal a three percent impairment of the right upper extremity due to loss of motion. The medical adviser found that the weakness described by Dr. Blew corresponded to impairment of the musculocutaneous nerve. Consulting Table 15, page 54 of the A.M.A., *Guides*, entitled "Maximum Upper Extremity Impairments Due to Unilateral Sensory or Motor Deficits or Combined Deficits of the Major Peripheral Nerves," the medical adviser determined that the maximum value for impairment of the musculocutaneous nerve due to motor deficit was 25 percent, and that according to Table 12, page 49, entitled "Determining Impairment of the Upper Extremity Due to Loss of Power ... Based on Individual Muscle Rating," appellant had a Grade four impairment of that nerve, described as "Active Movement against gravity with some resistance." The medical adviser then multiplied the 25 percent impairment value by the maximum value of 25 percent grade for the Grade 4 impairment, resulting in a 6 percent impairment of the right upper extremity due to weakness. The medical adviser then added this six percent impairment to the three percent impairment for loss of motion, totaling a nine percent permanent impairment of the right upper extremity.

By decision dated September 3, 1996, the Office awarded appellant a schedule award equivalent to a nine percent permanent impairment of the right upper extremity, with the period of award from May 24 to December 6, 1996.

The Board finds that appellant has not established that he sustained greater than a nine percent impairment of his right upper extremity, for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing regulations³ provide that schedule awards are payable for permanent impairment of specified body members, functions or organs, but do not specify how to determine the percentage of impairment. Therefore, the Office has adopted the A.M.A., *Guides* as a standard

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

for determining the percentage of impairment and the Board has concurred in such adoptions.⁴ Proper use of the A.M.A., *Guides* ensures consistent results and equal justice for all claimants.

The A.M.A., *Guides* lists specific procedures for determining impairment of affected body parts. A physician must first determine the effect of the medical condition on life activities and determine the date of maximum medical improvement. The physician then determines the nature of impairment, whether due to pain, sensory loss, motor deficit or other functional deficit. To calculate the specific percentage of impairment for schedule award purposes, the physician then follows the appropriate grading schemes set forth in the A.M.A., *Guides* for evaluating the specific impairment or impairments present. Finally, the physician performs the appropriate numeric calculations to either add or combine the elements of impairment to arrive at the total percentage of permanent impairment.

In the present case, the Office medical adviser used the appropriate figures, tables and grading schemes of the *Guides* in determining that appellant had a nine percent permanent impairment of the right upper extremity, three percent due to loss of range of motion, and six percent due to loss of strength. The Board finds that the medical adviser followed the appropriate methods for evaluating these impairments, and did not commit any mathematical errors. The medical adviser's report is detailed and complete, and is based on a thorough, recent report from appellant's attending physician containing an extremely detailed narrative regarding the degree and nature of appellant's right upper extremity impairments.

The Board notes that appellant has not submitted medical evidence supporting greater than a nine percent permanent impairment of the right arm. Appellant contends that he is entitled to a schedule award for a 10 to 12 percent impairment of the right upper extremity, based on Dr. Blew's reports. Although Dr. Blew mentioned in a May 20, 1994 report, that appellant had a 12 percent permanent impairment of the right arm, and in his May 24, 1996 report that appellant had a 10 percent permanent impairment of the right upper extremity, Dr. Blew did not refer to specific portions of the A.M.A., *Guides* to support these percentages. Therefore, these opinions regarding percentage of impairment are of insufficient weight to outweigh the Office medical adviser's opinion which is based, as the Act requires, on the A.M.A., *Guides*. Thus, the Board finds that appellant has not established that he sustained greater than a nine percent permanent impairment of the right upper extremity.

⁴ *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989); *Francis John Kilcoyne*, 38 ECAB 168, 170 (1986).

The decision of the Office of Workers' Compensation Programs dated September 3, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 26, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member