U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND C. DOCKERY and DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK

Docket No. 98-425; Submitted on the Record;
Issued September 7, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has greater than a 19 percent permanent loss of use of his right arm.

The Office of Workers' Compensation Programs accepted that appellant's employment as an aircraft sheet metal worker resulted in an impingement syndrome and rotator cuff syndrome of the right shoulder. The Office authorized surgery on appellant's right shoulder, which was performed in December 1995 and on January 7, 1997. On October 14, 1997 the Office issued appellant a schedule award for a 19 percent permanent loss of use of his right arm.

The Board finds that appellant has a 20 percent permanent loss of use of his right arm.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation,[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[3]

In a report dated July 16, 1997, appellant's attending physician, Dr. Kevin W. Hargrove, stated, "According to A.M.A., [*Guides*] fourth edition guidelines, secondary to this patient's

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.304.

[3] *Quincy E. Malone*, 31 ECAB 846 (1980).

chronic rotator cuff weakness, crepitus and loss of motion, I would rate him to have a 25 percent permanent impairment rating to the upper extremity." Dr. Hargrove, however, did not assign percentages to each of these three types of impairments and his July 16, 1997 report did not provide enough information on which to base a schedule award.[4] By letter dated July 23, 1997, the Office advised Dr. Hargrove of the information it needed to rate appellant's permanent impairment, including a showing of how the doctor arrived at the percentage of impairment using the applicable tables of the A.M.A., *Guides*, but Dr. Hargrove did not submit any further report.

On August 19, 1997 the Office referred appellant, the prior medical reports and a statement of accepted facts to Dr. John Tompkins for an evaluation of appellant's permanent loss of use of the right arm. In a report dated September 19, 1997, Dr. Tompkins stated that appellant could actively abduct to about 118 degrees, actively flex to about 115 degrees, externally rotate to about 30 degrees, internally rotate to about 70 degrees and extend to about 40 degrees. He stated that appellant's strength appears to be good in all planes of motion and noted that appellant had residual pain from his right shoulder rotator cuff tear. Dr. Tompkins then stated:

> "Based on the 4th edition of the A.M.A., *Guides to the Evaluation of Permanent Impairment*, I would state that Figure 38 indicates that he has 1 percent impairment based on limitation of extension and 5 percent impairment based on limitation of flexion. Figure 41 indicates that he has 3 percent impairment based on limitation of abduction, and Figure 44 indicates that he has 1 percent impairment for limitation of external rotation, and 1 percent impairment for limitation of internal rotation. The sum of these figures is 11 percent impairment for his right upper extremity."

On October 10, 1997 an Office medical adviser reviewed Dr. Tompkins' report and assigned the same percentages for the losses of motion found on examination as assigned by Dr. Tompkins, with the exception that the Office medical adviser assigned 0 rather than 1 percent for 40 degrees of extension. This was erroneous, as Figure 38 of Chapter 3 of the A.M.A., *Guides* shows that 40 degrees of shoulder extension constitutes a one percent impairment of the upper extremity. The Office medical adviser also used Table 27 of Chapter 3 to assign a 10 percent impairment to the resection arthroplasty of appellant's shoulder. As provided by section 3.1o, the Office medical adviser then combined the 10 percent impairment due to loss of motion with the 10 percent impairment for the arthroplasty to arrive at a 19 percent permanent loss of use of the right arm.[5] When the proper value of 1 percent is used for the 40 degrees of extension, the impairment for loss of motion is 11 percent. Combined with the 10 percent impairment for the right shoulder arthroplasty, the correct percentage of permanent loss of use is 20.

[4] In a June 2, 1997 report, Dr. Hargrove provided measurements of ranges of some, but not all, the motions of appellant's shoulder. In this report, as in the July 16, 1997 report, Dr. Hargrove did not assign percentages to any of the impairments he found, and did not indicate appellant had crepitus or weakness.

[5] The introduction to Chapter 3 of the 4th edition of the A.M.A., *Guides* states, "In general, the impairment percents shown in this chapter make allowance for the pain that may accompany the musculoskeletal system impairments."

The decision of the Office of Workers' Compensation Programs dated October 14, 1997 is modified to reflect that appellant has a 20 percent permanent loss of use of his right arm. The case is remanded to the Office for payment of an additional one percent.

Dated, Washington, D.C.
September 7, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member