

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES S. TILLET and DEPARTMENT OF THE ARMY,
ARMY CORPS OF ENGINEERS, New Orleans, LA

*Docket No. 00-529; Submitted on the Record;
Issued December 19, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a one percent permanent impairment of his left arm for which he received a schedule award.

On September 13, 1995 appellant, then a 47-year-old drill rig operator helper, was struck in the left shoulder by a hoist cable. He stopped working on September 14, 1995. Appellant underwent surgery on November 21, 1996 for acromioplasty and resection of the distal clavicle. The Office of Workers' Compensation Programs accepted appellant's claim for contusion of the left shoulder, impingement syndrome and rotator cuff repair. The Office paid temporary total disability from November 21, 1996 through January 14, 1997. Appellant returned to light-duty work on January 21, 1997 and the Office began payment of compensation for a 21 percent loss of wage-earning capacity, based on his actual wages as an Office aide.

In a March 4, 1999 decision, the Office issued a schedule award for a one percent permanent impairment of the left arm. Appellant requested a review of the written record by an Office hearing representative. In a July 24, 1999 decision, the Office hearing representative affirmed the March 4, 1999 decision.

The Board finds that the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of, members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, (A.M.A.), *Guides to the Evaluation of Permanent Impairment*³ has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

In a September 10, 1997 report, Dr. Richard L. Meyer, Jr., a Board-certified orthopedic surgeon, stated that appellant had a 15 percent impairment of the left arm due to his impingement syndrome with degenerative joint disease in the acromioclavicular joint. In a December 16, 1997 report, he indicated that appellant had some residual symptoms related to degenerative joint disease of the left glenohumeral joint with some impairment of his strength. In an April 3, 1998 Office form, Dr. Meyer indicated that appellant had 80 degrees of internal rotation of the left shoulder, 80 degrees of external rotation, 180 degrees of forward elevation, 60 degrees of backward elevation, 160 degrees of abduction and in adduction could move from 0 degrees to the side. He reported that appellant had an additional impairment of 15 percent due to pain and weakness.

In an accompanying report, Dr. Meyer stated that appellant had occasional left shoulder pain. He reported appellant had a full range of motion of the left shoulder with mild discomfort at the extremes and good strength with resisted abduction.

In a September 14, 1998 report, Dr. Meyer repeated his findings on appellant's range of motion and again estimated that he had a 15 percent permanent impairment due to pain and weakness. In a September 15, 1998 note, Dr. Meyer indicated appellant had continued left shoulder pain. He stated that appellant had mild limitation of motion of the shoulder with no instability or atrophy.

In a September 22, 1998 memorandum, an Office medical adviser reported that appellant had no impairment for loss of motion. He indicated that a mild discomfort of the arm received a grade of 25 percent of the maximum 5 percent permanent impairment of the axillary nerve for pain or sensory deficit, which equaled a 1 percent permanent impairment of the arm. The Office medical adviser noted that the good strength on resisted abduction equaled a 0 percent impairment for loss of strength. He concluded that appellant had a one percent permanent impairment of the left arm due to discomfort.

In a December 29, 1998 report, Dr. Meyer stated that he had previously given appellant a 50 percent permanent impairment rating, which included pain, loss of strength and inability to use the left arm in activities of daily living. The A.M.A., *Guides* covered only range of motion, which was unfortunate because appellant had more than a one percent permanent impairment given his complaints of pain as well as dysfunction of the rotator cuff, which was independent of his motion.

The Office properly calculated that appellant had no permanent impairment due to loss of motion and strength and found a one percent permanent impairment due to pain in the left

³ (4th ed., 1993).

⁴ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

shoulder. However, the A.M.A., *Guides* also provide an impairment rating for resection arthroplasties of various joints in the arm.⁵ Appellant underwent surgery for an acromioplasty and resection of the distal clavicle, which is included in the A.M.A., *Guides*. Dr. Meyer noted that appellant still had problems with the rotator cuff, which was separate from the range of motion measurements.

The Office medical adviser did not consider appellant's surgery in determining appellant's permanent impairment of the left arm. The case will, therefore, be remanded. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated July 24 and March 4, 1999 are hereby set aside and the case is remanded for further action as set forth in this decision.

Dated, Washington, DC
December 19, 2000

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁵ A.M.A., *Guides*.