

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD F. BEQUETTE and DEPARTMENT OF THE NAVY,
NAVAL AVIATION DEPOT, Cherry Point, NC

*Docket No. 00-1145; Submitted on the Record;
Issued March 8, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained greater than a 12 percent permanent impairment of the right upper extremity for which he received a schedule award.

On May 9, 1996 appellant, then a 44-year-old aircraft mechanic, sustained a right rotator cuff tear in the performance of duty. He sustained a recurrence of disability on November 7, 1996.

On March 11, 1998 appellant underwent surgery for repair of a right rotator cuff tear with a partial acromionectomy.

On October 27, 1998 appellant filed a claim for a schedule award.

In a report dated September 10, 1998, Dr. Ray B. Armistead, appellant's attending physician, opined that appellant had a 22 percent permanent impairment of the right upper extremity based upon a 20 percent permanent impairment due to weakness, atrophy, pain or loss of sensation and findings of 40 degrees of internal rotation, 10 degrees of external rotation, 140 degrees forward elevation, 25 degrees backward elevation, 130 degrees abduction and 40 degrees adduction.

By letter dated April 16, 1999, the Office of Workers' Compensation Programs asked Dr. Armistead to provide an evaluation of appellant's right shoulder impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) (hereinafter, the A.M.A., *Guides*). Apparently, no response was received from Dr. Armistead.

In a report dated August 6, 1999, an Office medical adviser determined that appellant had a 12 percent permanent impairment of the right upper extremity based upon Dr. Armistead's September 10, 1998 findings. He found that appellant had a 3 percent and 2 percent impairment, respectively, based on 140 degrees of forward elevation (flexion) and 25 degrees of backward elevation (extension) according to Figure 38 at page 43 of the A.M.A., *Guides*, a 2 percent and 0

percent impairment due to 130 degrees of abduction and 40 degrees of adduction according to Figure 41 at page 44 and a 3 percent and 2 percent impairment based on 40 degrees of internal rotation and 10 degrees of external rotation according to Figure 44 at page 45.

By letter dated August 11, 1999, the Office asked Dr. Armistead to review the calculations of the Office medical adviser and advise the Office whether he agreed with the 12 percent impairment determination or whether he felt the Office had failed to consider some aspect of appellant's condition which would raise the impairment rating.

In medical notes dated August 24, 1999, Dr. Armistead indicated that he told appellant that he disagreed with the Office's 12 percent impairment rating.

By letter dated September 10, 1999, appellant asked the Office why it did not include Dr. Armistead's finding of weakness or atrophy in its impairment rating.

In a memorandum dated October 15, 1999, an Office claims examiner asked the Office medical adviser why he had not included consideration of appellant's pain or weakness in his impairment evaluation. The Office medical adviser responded that Dr. Armistead did not provide information for specific weakness, atrophy or nerve impairment. He suggested that the Office send Dr. Armistead copies of pages 47 through 54 of the fourth edition of the A.M.A., *Guides* and stated, "He would need to use [these] tables to document PPI [permanent partial impairment] for muscle, nerve impairment."

By decision dated December 4, 1999, the Office granted appellant a schedule award for 37.44 weeks of compensation based upon a 12 percent permanent impairment of the right upper extremity.

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

The Federal Employees' Compensation 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.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.² 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."³ This description must be in sufficient detail so that the claims examiner and

¹ 5 U.S.C. § 8107(a).

² *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

³ 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).

others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁴

In this case, Dr. Armistead, appellant's attending physician, opined in his September 10, 1998 report that appellant had a 22 percent permanent impairment, including a 20 percent permanent impairment due to pain or weakness, but he did not indicate how he arrived at his evaluation based upon the A.M.A., *Guides*. In a memorandum dated October 15, 1999, an Office medical adviser suggested that the Office send Dr. Armistead copies of pages 47 through 54 of the fourth edition of the A.M.A., *Guides* and stated, "He would need to use [these] tables to document PPI for muscle, nerve impairment." However, the Office issued a schedule award decision on December 4, 1999 without obtaining the necessary information regarding the degree of appellant's permanent impairment attributable to pain or weakness. Therefore, the December 4, 1999 Office decision will be set aside and the case remanded for further development.

On remand, the Office should obtain a complete description of appellant's permanent impairment from his attending physician and determine his permanent impairment based upon these findings and the A.M.A., *Guides*. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated December 4, 1999 is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
March 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ *Roel Santos*, 41 ECAB 1001, 1005 (1990); *Alvin C. Lewis*, 36 ECAB 595-96 (1985).