

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DERRICK L. BAILEY and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, Del.

*Docket No. 96-1931; Submitted on the Record;
Issued May 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he has more than a one percent permanent impairment of his left 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 did not meet his burden of proof to establish that he has more than a one percent permanent impairment of his left 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 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 of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the*

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).

Evaluation of Permanent Impairment (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

In the present case, the Office accepted that appellant sustained a left shoulder strain/sprain at work on May 23, 1993. By award of compensation dated December 5, 1995, the Office granted appellant a schedule award for a one percent permanent impairment of his left upper extremity. The award ran for three weeks from September 20 to October 11, 1994. The Office based its schedule award on the opinion of Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon to whom the Office referred appellant.

In a report dated September 20, 1994, Dr. Eckbold determined that appellant had a one percent permanent impairment of his left upper extremity based on the relevant standards of the A.M.A., *Guides*. Dr. Eckbold properly noted that appellant's 160 degrees of left shoulder abduction entitled him to a 1 percent impairment rating.⁶ The record contains an August 29, 1995 letter and an undated letter, received by the Office on September 11, 1995, in which Dr. Carl L. Turner, an attending Board-certified internist, indicated that appellant had a 16 percent permanent impairment of the whole body due to a herniated cervical disc at C6-7. However, it has not been accepted that appellant sustained an employment-related herniated cervical disc or other cervical condition and, therefore, Dr. Turner's report is of no probative value regarding appellant's entitlement to a schedule award for an employment-related permanent impairment. Moreover, a schedule award is not payable under section 8107 of the Act for an impairment of the whole person.⁷ As the report of Dr. Eckbold provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.⁸

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁶ See A.M.A., *Guides* 44, Figure 41. Dr. Eckbold indicated that appellant did not have any other range of motion deficits and did not have any motor or sensory deficits. Dr. Eckbold's opinion was supported by an October 25, 1995 report of an Office medical adviser.

⁷ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

⁸ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

The decision of the Office of Workers' Compensation Programs dated December 5, 1995 is affirmed.

Dated, Washington, D.C.
May 7, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member