

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANK SIDERIO and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 00-115; Submitted on the Record;  
Issued April 26, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to more than a 35 percent permanent impairment for loss of use of the right arm, for which he has already received a schedule award.

On April 4, 1989 appellant, then a 43-year-old boilermaker, filed a traumatic injury claim alleging that on March 28, 1989 he sustained temporomandibular joint (TMJ) syndrome of the left jaw as a result of an accident in an employing establishment motor vehicle. He stopped work on March 29, 1989 and returned to work on April 4, 1989.

The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain and TMJ. Subsequently, by letter dated February 2, 1996, the Office expanded its acceptance of appellant's claim to include cervical disc herniation at C5-6 and C6-7 and cervical radiculopathy, and authorized cervical fusion at C5-6 and C7.

On May 30, 1997 appellant filed a claim for a schedule award. In a May 7, 1997 report, Dr. David Weiss, a Board-certified orthopedic surgeon, provided a history of appellant's March 28, 1989 employment injury and medical treatment, appellant's complaints and his findings on physical and neurological examination. Dr. Weiss diagnosed herniated nucleus pulposus at C5-6, C6-7, cervical spondylosis at C5-6 and C6-7, right cervical radiculopathy, status post anterior cervical discectomy and fusion at C5-6, C6-7, status post foraminotomy at C5-6 and C6-7, status post removal of osteophyte at C5-6 and C6-7, and arthrodesis at C5-6 and C6-7 with allograft. He opined that the March 28, 1989 employment injury was the competent producing factor for appellant's subjective and objective findings. Dr. Weiss determined that appellant had a 47 percent permanent impairment of the right upper extremity. In so doing, he provided the following:

- "1. For the sensory deficit, C5-6 --  $25 \times 20 = 25$  percent
2. For the motor deficit, C5-6 --  $75 \times 25 = 19$  percent

3. For the sensory deficit C7 --  $5 \times 100 = 5$  percent
4. For the motor deficit C7 --  $35 \times 25 = 9$  percent”

Dr. Weiss used Table 14, page 52; Table 11, page 48; and Table 12, page 49 of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in determining appellant’s impairment rating. He concluded that appellant reached maximum medical improvement on March 31, 1997.

On July 7, 1997 an Office medical adviser reviewed the medical evidence of record, including Dr. Weiss’ May 7, 1997 medical report. The Office medical adviser stated that Dr. Weiss used the appropriate tables and agreed with Dr. Weiss that appellant reached maximum medical improvement on March 31, 1997. The Office medical adviser, however, found that Dr. Weiss’ mathematics was incorrect and determined that appellant had a 35 percent permanent impairment of the right arm. The Office medical adviser made the following calculations and applied the combined values table as follows:

“Table 14, page 52 maximum sensory

C5 -- 5 percent

C6 -- 8 percent

C7 -- 5 percent

Table 11, page 48 pain

80 percent -- 4 percent

80 percent -- 6 percent

80 percent -- 4 percent

Table 12, page 49 maximum motor deficit

$30 \times 25 = 8$  percent

$35 \times 25 = 9$  percent

$35 \times 25 = 9$  percent”

On October 9, 1997 the Office granted appellant a schedule award for a 35 percent loss of use of the right arm for March 31, 1997 through May 4, 1999. By letter dated October 20, 1997, appellant, through his counsel, requested an oral hearing.

By decision dated October 5, 1998, the hearing representative affirmed the Office’s October 9, 1997 decision.

In a letter dated July 15, 1998, appellant, through his counsel, requested reconsideration and submitted Dr. Weiss' June 19, 1998 addendum report. Dr. Weiss found that appellant had a 44 percent permanent impairment of the right upper extremity based on the same tables he used previously to calculate a 47 percent impairment rating. Specifically, Dr. Weiss calculated the following:

- "1. For the sensory deficit C5-6 --  $25 \times 80 = 20$  percent
2. For the motor deficit C5-6 --  $75 \times 25 = 19$  percent
3. For the sensory deficit C7 --  $5 \times 100 = 5$  percent
4. For the motor deficit C7 --  $35 \times 25 = 9$  percent"

In a January 7, 1999 decision, the Office denied appellant's request for modification after a merit review finding that appellant had a 35 percent permanent impairment of the right arm.

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

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>3</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup>

In this case, the Office medical adviser reviewed the figures obtained by Dr. Weiss in his May 7, 1997 medical report and found that, although Dr. Weiss applied the proper tables in the A.M.A., *Guides*, he improperly calculated appellant's impairment rating. The Office medical adviser used Tables 11, 12 and 14 of the fourth edition of the A.M.A., *Guides* to determine that appellant had a 35 percent impairment of the right upper extremity.

Under the A.M.A., *Guides*, a brachial plexus-related impairment percent is derived as follows: rate the severity of sensory deficit or pain according to Table 11a and that of motor deficit according to Table 12a; find the percents for maximum impairment of the upper extremity due to sensory and motor deficits of the brachial plexus and its trunk according to Table 14;

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

multiply the severity of sensory and/or motor deficits by the appropriate values from Table 14 to obtain upper extremity impairment percents for each function and combine the sensory and motor impairment to determine the impairment of the upper extremity according to the Combined Values Chart.<sup>5</sup>

The Office medical adviser's findings do not comport with the tables he used in finding that appellant had a 35 percent permanent impairment of the right upper extremity.

Dr. Weiss, in his June 19, 1998 addendum report, properly used the applicable tables and the Combined Values Chart in recalculating his finding that appellant had a 44 percent rather than a 47 percent permanent impairment of the right upper extremity.

Inasmuch as the Office medical adviser did not properly use the applicable tables of the A.M.A., *Guides*, to determine the extent of appellant's impairment of the right upper extremity, the medical adviser's report was an insufficient basis for calculation of a schedule award. Therefore, the case must be remanded to the Office for recalculation of the schedule award. After such development as the Office deems necessary, the Office shall issue a *de novo* decision.

The January 7, 1999 and October 5, 1998 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC  
April 26, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>5</sup> A.M.A., *Guides*, pp. 48-49, 52-53, 322 (4<sup>th</sup> ed. 1993).