

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY N. JACKSON and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Reno, NV

*Docket No. 02-1159; Submitted on the Record;
Issued September 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a three percent permanent impairment of his left upper extremity, for which he received a schedule award.

Appellant's claim, filed on August 13, 1998 after he hurt his neck and shoulder while trying to open a door on a mail cage on June 29, 1998, was accepted for a cervical strain. Appellant returned to limited duty and underwent physical therapy and an epidural injection. A magnetic resonance imaging (MRI) scan showed disc bulging at C4-5, C5-6 and C6-7 with stenosis.

The Office of Workers' Compensation Programs referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, who diagnosed chronic degenerative disc disease at multiple levels in the cervical spine. In his April 22, 1999 report, he stated that the June 29, 1998 work injury permanently aggravated appellant's underlying cervical condition but released him to full-time work with lifting and sitting restrictions.¹

Appellant requested a schedule award, and the Office referred him to Dr. Frank Quaglieri, Board-certified in internal medicine and neurology, for an evaluation. Based on his findings, the Office medical adviser found a three percent permanent impairment of appellant's left arm and zero percent impairment of his right arm.

On June 18, 2001 the Office issued a three percent schedule award for appellant's left arm. The award totaled \$4,501.04 and ran from August 23 to October 27, 1999. Appellant requested a review of the written record. On October 19, 2001 the hearing representative remanded the claim for the Office to obtain a supplemental report from Dr. Quaglieri explaining the causal relationship of his diagnoses to the June 29, 1998 incident.

¹ In response to an Office request for clarification, Dr. Swartz stated that the restrictions were prophylactic.

Based on Dr. Quaglieri's January 21, 2002 supplemental report, the Office accepted aggravation of cervical degenerative disc disease with C6 radiculopathy and reissued its June 18, 2001 schedule award. In a March 5, 2002 decision, the Office found that appellant had no greater than a three percent loss of use of his left arm.

The Board finds that appellant is entitled to no more than three percent permanent impairment of his left upper extremity, for which he has received a schedule award.

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.³ The Act, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁴ The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.⁵

In this case, appellant reached maximum medical improvement on August 23, 1999, according to his treating physician, Dr. George Mars, a practitioner in physical medicine. The referral physician, Dr. Quaglieri, reported on May 4, 2001 that appellant had a 15 percent impairment of the whole person, based on the fourth edition of the A.M.A., *Guides*, due to his cervical radiculopathy. The Act does not provide for permanent partial impairment of the whole person.⁶ Further, Dr. Quaglieri erroneously used the fourth edition of the A.M.A., *Guides*.⁷

The Board has held that a medical opinion not based on the appropriate edition of the A.M.A., *Guides* has little probative value in determining the extent of a claimant's permanent impairment.⁸ Because Dr. Quaglieri's opinion was not based on the proper edition of the A.M.A., *Guides* and could not establish impairment rating, the Office properly requested that its medical adviser review his findings and determine a proper rating.⁹

² 5 U.S.C. §§ 8101-8109.

³ 5 U.S.C. § 8107.

⁴ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *John Year*, 48 ECAB 243, 247 (1997).

⁷ The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date.

⁸ *Carolyn E. Sellers*, 50 ECAB 393, 394 (1999).

⁹ See *Denise D. Cason*, 48 ECAB 530, 531 (1997) (finding that, although appellant's physician found a greater impairment rating, he failed to explain the basis of his opinion, and the Office medical adviser properly applied the "Diagnosis Based Estimates" in the fourth edition of the A.M.A., *Guides* to determine the correct percentage of impairment).

The Office medical adviser reviewed Dr. Quaglieri's reports and found no impairment due to loss of strength or range of motion. Impairment due to sensory deficit or pain was rated as Grade III based on symptoms of appellant's left upper extremity, a 40 percent rating, according to Table 16-10 on page 482 of the fifth edition of the A.M.A., *Guides*. Maximum impairment based on the C6 nerve was eight percent, according to Table 16-15, page 492. Multiplying 40 percent by 8 equaled a 3 percent impairment of the left upper extremity. According to Dr. Quaglieri, appellant's right upper extremity was symptom free. Therefore, no impairment was found.

Inasmuch as the Office properly applied the fifth edition of the A.M.A., *Guides* to the medical evidence, appellant is entitled to no more than three percent permanent impairment of his left upper extremity.

The March 5, 2002 and June 18, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
September 10, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member