

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL EVERETT and DEPARTMENT OF THE AIR FORCE,
INDUSTRIAL WASTE COMPOUND, HILL AIR FORCE BASE, Utah

*Docket No. 96-1595; Submitted on the Record;
Issued April 2, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he has more than a 12 percent permanent impairment of his left arm 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 12 percent permanent impairment of his left arm 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 an employment-related right shoulder strain on January 13, 1994. The Office authorized right shoulder surgery, including arthroscopic and decompression surgery on June 14, 1994 and April 11, 1995. By award of compensation dated August 21, 1995, the Office granted appellant a schedule award for a 12 percent permanent impairment of his right arm. The award ran for 37.44 weeks from July 5, 1995 to March 23, 1996. The Office based its August 21, 1995 decision on the August 10, 1995 opinion of the Office medical adviser who applied the standards of the A.M.A., *Guides* to the July 5, 1995 findings of Dr. Kenneth Jee, an attending Board-certified orthopedic surgeon.

The Board notes that the Office medical adviser correctly applied the relevant standards of the A.M.A., *Guides* to Dr. Jee's findings in order to determine that appellant had a 12 percent permanent impairment of his right arm. He properly determined that appellant was entitled to a 6 percent impairment rating for limited range of motion of his right shoulder: 1 percent due to 160 degrees of flexion; 1 percent due to 30 degrees of extension; 2 percent for 140 degrees of abduction; 1 percent for 20 degrees of adduction; and 1 percent for 30 degrees of external rotation.⁶ The Office medical adviser properly determined that appellant was entitled to a six percent impairment rating due to his mild glenohumeral crepitation.⁷ He then properly combined the two 6 percent impairment ratings, using the Combined Values Chart, to determine that appellant had a total permanent impairment of his right arm of 12 percent.⁸ On appeal appellant asserted that his August 21, 1995 schedule award should be paid in a lump sum. However, the record does not contain a final decision of the Office concerning lump-sum payment and, therefore, the matter is not currently before the Board.⁹

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

⁶ A.M.A., *Guides* 43-45, Figures 38, 41, 44. Appellant's 85 degrees of internal rotation would not entitle him to an impairment rating.

⁷ *Id.* at 58-59, Tables 18, 19.

⁸ *Id.* at 322, Combined Values Chart.

⁹ See 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated August 21, 1995 is affirmed.

Dated, Washington, D.C.
April 2, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member