

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICTORIA JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, Ill.

*Docket No. 96-2313; Submitted on the Record;
Issued August 12, 1998*

DECISION and ORDER

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

The issue is whether appellant has greater than a one percent permanent loss of use of her right arm related to her February 4, 1992 employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained a right shoulder sprain. The Office, after requesting from appellant and from her attending physician a report evaluating the permanent impairment of appellant's right arm using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), referred appellant to Dr. Richard Sidell, a Board-certified orthopedic surgeon, for such an evaluation. On the basis of Dr. Sidell's April 25, 1995 report, the Office issued appellant a schedule award for a one percent permanent loss of use of the right arm.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner, in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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*, has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

The April 25, 1995 report of Dr. Sidell contains measurements of only three of the six aspects of shoulder motion set forth in the A.M.A., *Guides*: elevation (the 4th edition terms this flexion), external rotation and internal rotation. This report does not contain any measurement of shoulder extension, abduction, or adduction. The Office should not have based a schedule award on this incomplete information.⁴ The meaning of Dr. Sidell's description of appellant's ability to elevate her arm is not clear: "She has 60 degrees of shoulder elevation with pain experienced on an elevation above 90 degrees." Sixty or 90 degrees of shoulder elevation or flexion would constitute a ratable impairment under the A.M.A., *Guides*, yet no percentage of impairment for loss of shoulder flexion was assigned by Dr. Sidell or by an Office medical adviser who reviewed his report. In addition, the Office medical adviser's assignment of zero percent for pain on the basis that the pain was intermittent is erroneous. So long as it is permanent, intermittent pain may constitute a basis for payment of a schedule award.⁵ The case will be remanded to the Office, so that it may obtain a complete evaluation of appellant's permanent impairment of the right arm and for issuance of an appropriate schedule award.

The decision of the Office of Workers' Compensation Programs dated November 17, 1995 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
August 12, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁴ *Henry G. Flores, Jr.*, 43 ECAB 901 (1992). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6c (March 1995) provides that the medical report must include the loss in degrees of motion of the affected member.

⁵ See *John P. Adams*, 34 ECAB 1468 (1983) (Case was remanded for the Office to consider intermittent leg pain in issuing a schedule award.); *Eddie B. Chambers*, 30 ECAB 937 (1979) (The Board found that a schedule award that included a percentage for intermittent pain was properly calculated.)