

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY M. BAMBERY and U.S. POSTAL SERVICE,
SOUTH POSTAL ANNEX, Boston, Mass.

*Docket No. 95-2952; Submitted on the Record;
Issued February 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to greater than a 10 percent permanent impairment of the left upper extremity for which she has received a schedule award.

The Board has duly reviewed the record and finds that appellant does not have more than a 10 percent permanent impairment of her left upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing federal regulations² provide for payment of compensation for the permanent loss or loss of use of specified members, functions and organs of the body. The provisions of the Act and the implementing federal regulations set forth the number of weeks of compensation to be paid for permanent loss of a member, function and organ of the body listed in the schedule, but do not specify the manner in which the percentage of loss shall be determined.³ The method used in making such a determination is a matter that rests in the sound discretion of the Office of Workers' Compensation Programs.⁴ The Office has adopted and the Board has approved, the use

¹ 5 U.S.C. § 8107(a).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8017; 20 C.F.R. § 10.304; *see Richard W. Robinson*, 39 ECAB 484 (1988).

⁴ *See Danniell C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) (hereinafter the A.M.A., *Guides*).⁵

In the present case, the Office accepted that appellant sustained an injury to her left shoulder and pinched nerve syndrome.

By decision dated December 15, 1978, the Office granted appellant a schedule award for five percent permanent loss of use of left arm. The period of the award was to run from April 27 to August 14, 1978 for a fraction of a day. The Office noted that the balance due appellant for this period was zero as she had received compensation during this period.⁶ By decision dated June 27, 1995, the Office granted appellant a schedule award for an additional five percent permanent impairment of the left arm. The period of the award was to run from September 15, 1992 to January 2, 1993.

In a letter dated August 28, 1992, the Office referred appellant along with a statement of accepted facts, her medical record and questions about a schedule award, to Dr. William L. Kermond, a Board-certified orthopedic surgeon.

In a September 15, 1992 report, Dr. Kermond opined that appellant had a seven percent impairment of her left upper extremity. In reaching this opinion, Dr. Kermond noted, measurements of the loss of range of motion of the left upper extremity indicate flexion of 160 degrees, extension of 40 degrees, abduction of 160 degrees, adduction of 45 degrees, internal rotation of 20 degrees, and external rotation of 90 degrees. Dr. Kermond completed the schedule award form, but did not indicate that he utilized the A.M.A., *Guides* in arriving at his impairment rating of seven percent for the left upper extremity. Dr. Kermond also diagnosed a left shoulder pain of uncertain etiology.

By letter dated May 10, 1993, the Office requested additional information from Dr. Kermond on the cause of appellant's left shoulder pain. Dr. Kermond responded in a letter

⁵ *Id.* The Office procedures direct the use of the third edition, issued in 1988, for schedule awards determined between March 8, 1989 to August 31, 1991; the third edition, revised, for schedule awards determined between September 1, 1991 and October 31, 1993; the fourth edition, issued in 1993, for schedule awards determined on and after November 1, 1993; see FECA Bulletins Nos. 89-30 (commencing use of the third edition), 91-27 (commencing use of the third edition, revised) and 94-4 (commencing use of the fourth edition); see also, Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 exh. 4, 4 (October 1995).

⁶ It is a well-established principle that a claimant is not entitled to dual workers' compensation benefits for the same injury. *Benjamin Swain*, 39 ECAB 448 (1988). A claimant may not receive compensation for temporary total disability or compensation based on loss of wage-earning capacity and a schedule award covering the same period of time; see *Eugenia L. Smith*, 41 ECAB 409, 412 (1990); *Robert T. Leonard*, 34 ECAB 1687, 1690 (1983); *Helen R. Plimton*, 34 ECAB 829, 897-98 (1983). As Larson points out, generally, "the schedule award is added to the allowance for temporary total disability." Larson, *The Law of Workmen's Compensation* § 58.15. However, Larson makes clear that both benefits are not to be paid concurrently. In comparing schedule benefits with other benefits provided under workers' compensation laws for an injury, Larson notes: "It goes without saying that, when the statute provides parallel remedies for the same injury, it is not intended that claimant should have both." *Id.* § 58.20, n. 42. With respect to the Act, the Board has held: "An employee cannot [con]currently receive compensation under a schedule award and compensation for disability for work." *Andrew B. Poe*, 27 ECAB 510, 512 (1976).

dated May 18, 1993 in which he opined, based upon the A.M.A., *Guides*, that appellant had a seven percent impairment of the left upper extremity. Dr. Kermond stated that he used the term “uncertain” because appellant has restriction of motion in both her neck and shoulder and it is difficult to determine whether the pain is in her neck or shoulder. Dr. Kermond stated that he believed that her symptoms were due to her employment injury of September 26, 1992.

In a report dated December 8, 1994, the Office medical adviser reviewed the report by Dr. Kermond, and stated that he concurred with Dr. Kermond’s opinion that appellant has a seven percent impairment of her left upper extremity. The Office medical adviser correlated the measurements to the A.M.A., *Guides* (4th ed. 1993) and indicated that appellant had sustained a one percent loss on flexion, a one percent loss on extension, a one percent loss on abduction, and a four percent loss on internal rotation, which totaled a seven percent loss of impairment to the upper left extremity.⁷ The Office medical adviser also indicated that appellant was entitled to a three percent impairment due to pain. The Office medical adviser utilized the Combined Values Chart to determine that appellant had a 10 percent impairment of the left upper extremity.

The Board has reviewed the medical adviser’s calculations pursuant to the A.M.A., *Guides* and concludes that they are proper.⁸

The decision of the Office of Workers’ Compensation Programs dated June 27, 1995 is hereby affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ A.M.A., *Guides* (4th ed. 1993).

⁸ *Lena P. Huntley*, 46 ECAB 643 (1995).