

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LLOYD W. HARRIS and NATIONAL AERONAUTICS & SPACE
ADMINISTRATION, AMES RESEARCH CENTER, Moffett Field, Calif.

*Docket No. 96-1101; Submitted on the Record;
Issued February 17, 1998*

DECISION and ORDER

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

The issue is whether appellant has more than an eight percent impairment of the left upper extremity, for which he received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no greater than an eight percent permanent impairment of the left upper extremity.

On September 25, 1995 appellant, then a 53-year-old model maker, filed an occupational disease claim that was accepted by the Office of Workers' Compensation Programs for degenerative disc disease at C5-6 and C6-7 and subacromial impingement of the left shoulder. Appellant underwent a cervical discectomy and fusion on December 19, 1994. By decision dated February 12, 1996, the Office granted him a schedule award for an eight percent permanent impairment for loss of use of the left upper extremity for the period February 3 to December 15, 1996 for a total of 24.96 weeks of compensation.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. 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 American Medical Association, *Guides to the Evaluation of Permanent*

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

*Impairment*³ have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

On appeal, appellant contends that he is entitled to a greater schedule award due to loss of use of the neck. The Board notes, however, that the neck is not a member of the body enumerated under section 8107 with respect to loss of use.⁵ Regarding appellant's shoulder, following a request by the Office, Dr. Robert W. Chow, appellant's treating Board-certified neurosurgeon, advised that appellant had reached maximum medical improvement on September 12, 1994. He noted that appellant had minimal pain in his neck and shoulder that did not interfere with his work. On examination, range of motion of the shoulder was normal except for a slight impairment in extension. Dr. Chow advised that appellant had no weakness or atrophy of the shoulder.

In a November 9, 1995 report, Dr. Arthur S. Harris, an Office medical adviser, recommended that the Office obtain a supplemental report from Dr. Chow concerning appellant's left shoulder and cervical radiculopathy. By report dated December 15, 1995, Dr. Chow advised that, while appellant had no weakness, muscle atrophy or sensory deficit related to the upper extremities, he did have significant restriction of neck movements, with 30 percent of the normal range of extension, 35 percent of the normal range in turning his head from side to side and a 40 percent limitation of neck flexion. Dr. Chow noted that appellant had pain at the base of the neck, radiating to the trapezius ridge on the left. In a January 10, 1996 report, Dr. Harris reviewed Dr. Chow's December 15, 1995 report and based on Dr. Chow's opinion regarding pain in the neck and shoulder, concluded that appellant had an eight percent impairment of the left upper extremity due to grade II pain in the axillary/deltoid and suprascapular regions and C6-7 nerve roots.

In obtaining medical evidence required for a schedule award, the evaluation made by a physician must include a detailed description of the impairment including, where applicable, the loss in degree of motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁶ The Board finds that, applying Dr. Chow's measurements, the Office medical adviser properly determined the degree of impairment of appellant's left upper extremity. As it is appellant's burden to submit sufficient evidence to establish her claim,⁷ the Board finds that the Office permissibly followed the advice of its medical consultant in granting appellant a schedule award for an eight percent permanent impairment of the left upper extremity.

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ *Supra* notes 1 and 2.

⁶ See *Gary L. Loser*, 38 ECAB 673 (1987).

⁷ See *Annette M. Dent*, 44 ECAB 403 (1993).

The decision of the Office of Workers' Compensation Programs dated February 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
February 17, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member