

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOREN MAROVELLI and DEPARTMENT OF THE NAVY,
NAVAL SUPPLY CENTER, Oakland, Calif.

*Docket No. 96-1257; Submitted on the Record;
Issued February 24, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 17 percent impairment of his right upper extremity for which he received a schedule award.

On April 28, 1994 appellant, then a 43-year-old engineer, sustained a fracture of his right arm humeral head while in the performance of duty. On May 20, 1994 he underwent an arthrotomy of the right elbow with excision of multiple loose bodies. His claim was accepted by the Office of Workers' Compensation Programs and appellant received appropriate compensation benefits.

By letter dated February 9, 1995, the Office requested Dr. Victor A. Prieto, a Board-certified orthopedic surgeon and appellant's attending physician, to determine the extent of permanent impairment of the right elbow. In a February 27, 1995 report, Dr. Prieto stated that appellant had not regained full range of motion of his elbow, noting flexion of 115 degrees, extension of -40 degrees, forearm pronation of 90 degrees, and supination of -50 degrees. He noted that appellant was "essentially unchanged now almost one year postoperative." With regard to muscle atrophy, Dr. Prieto said his findings were minor, but overall loss to grip strength of the right upper extremity was about 25 to 30 percent.

The Office referred the medical record to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an Office medical consultant. In a May 22, 1995 report, Dr. Harris correlated the findings of Dr. Prieto with the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. In assessing loss of motion, Dr. Harris noted that 115 degrees of elbow flexion represented a 3 percent impairment;¹ -40 degrees of elbow extension represented a 4 percent impairment;² and -50 degrees of elbow

¹ A.M.A., *Guides*, figure 32, p. 40 (4th ed. 1993).

² *Id.*

supination represented a 1 degree impairment.³ Dr. Harris appropriately added the range of motion values to determine that appellant had a total of eight percent impairment due to loss of range of motion of his right elbow. In assessing the impairment due to appellant's decreased grip/muscle strength, Dr. Harris noted that a loss of up to 30 percent in strength, as estimated by Dr. Prieto, resulted in a rating of 10 percent upper extremity impairment.⁴ Finally, Dr. Harris utilized the combined values chart to obtain the total impairment rating of 17 percent of the right upper extremity.⁵

By decision dated June 2, 1995, the Office issued appellant a schedule award for 17 percent impairment of his right upper extremity. The Office noted that the period of the award would run for 53.04 weeks, from February 27, 1995 to March 4, 1996.

By letter dated January 17, 1996, appellant requested reconsideration, contending that due to the injury to his right arm he experienced a lost quality of life as he could no longer engage in sports. Appellant also contended that he was likely to develop osteoarthritis in his right arm and argues that "a settlement award of 206 weeks of compensation (approximately \$200,000.00)" be allowed for a compromise and release which would reflect his life-long financial need due to his employment injury. Appellant resubmitted the February 27, 1995 report of Dr. Prieto, together with a November 16, 1995 notation from the physician in which he noted appellant's concerns about possible future lost functioning of his right upper extremity.

By decision dated February 21, 1996, the Office found that the evidence submitted by appellant was insufficient to warrant review of the June 2, 1995 schedule award determination.

The Board finds that appellant has no more than a 17 percent impairment of his right upper extremity for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act and their implementing federal regulations set forth the number of weeks of compensation payable to an employee sustaining permanent impairment from loss, or loss of use, of a specified member or function of the body.⁶ 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.⁷ The A.M.A., *Guides* have been adopted

³ A.M.A., *Guides*, figure 35, p. 41 (4th ed. 1993). According to figure 35, appellant's 90 degrees of pronation does not amount to any impairment of the upper extremity.

⁴ A.M.A., *Guides*, Table 34, p. 65 (4th ed. 1993).

⁵ A.M.A., *Guides*, Combined Values Chart, p. 322 (4th ed. 1993).

⁶ 5 U.S.C. § 8107; 20 C.F.R. § 10.304.

⁷ See *Lena P. Huntley*, 46 ECAB 643 (1995); *John H. Smith*, 41 ECAB 444 (1990).

by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁸

In the present case, appellant's attending physician, Dr. Prieto provided a February 27, 1995 report in which he set forth his findings concerning loss of range of motion and loss of strength due to appellant's right elbow fracture. As Dr. Prieto did not provide an estimate of impairment to appellant's upper right extremity in conformance with the A.M.A., *Guides*, the Office properly referred the physician's report to Dr. Harris for his review and comment. Dr. Harris, in turn, assigned an estimated percentage to each impairment described by Dr. Prieto. The estimates provided by Dr. Harris in his report, as noted above, indicate that he used the applicable tables and charts of the A.M.A., *Guides* as the basis for his calculation of a 17 percent impairment of the right upper extremity. The Board finds that the weight of medical evidence is represented by the report of Dr. Harris.

On reconsideration, appellant resubmitted the February 27, 1995 report of Dr. Prieto, together with a November 16, 1995 notation in which the physician addressed possible future loss of functioning of the right arm. The Board notes, however, that it is well established that a schedule award may not be made on the basis of a possibility that the extent of an impairment will increase in the future. If at some later date a medical examination indicates that appellant's condition has worsened, an amended schedule award can be made to cover any additional impairment.⁹

With regard to appellant's contention that his injury has caused lifestyle changes or will result in a reduction of earning power, the Board notes that an award for permanent impairment pursuant to the schedule is the maximum compensation payable under the Act unless there is a change in the degree of impairment. This holds true regardless of the effect of such impairment upon employment opportunities, sports, hobbies or other activities.¹⁰ A schedule award is not intended to be compensation for wage loss or potential wage loss.¹¹ Under the schedule, the maximum allowed for total loss or loss of use of the arm is 312 weeks of compensation.¹² As the medical evidence establishes that appellant has a 17 percent impairment of his right upper extremity, he is entitled to a maximum of 17 percent of 312 weeks, or 53.04 weeks as was awarded by the Office. Appellant has failed to demonstrate any basis on which to base a greater award.

⁸ *Donald Mueller*, 32 ECAB 33 (1980); *Anne E. Hughes*, 27 ECAB 106 (1975); *August M. Buffa*, 12 ECAB 324 (1961).

⁹ *Michael C. Norman*, 42 ECAB 768 (1991).

¹⁰ *See Robert R. Kuehl*, 13 ECAB 77 at 78 (1961).

¹¹ *Catherine R. Birdsell*, 32 ECAB 907 (1981).

¹² 5 U.S.C. § 8107(c)(1).

The February 21, 1996 and June 2, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 24, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member