

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL KOZAK and U.S. POSTAL SERVICE,
POST OFFICE, Manchester, N.H.

*Docket No. 96-932; Submitted on the Record;
Issued January 27, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent permanent impairment of the right arm.

The Board has reviewed the case record and finds that it does not establish that appellant has more than a two percent permanent impairment of the right arm.

Appellant has an accepted claim for impingement syndrome of the right shoulder. He underwent authorized arthroscopic surgery in November 1993 and returned to a light-duty assignment in February 1994.¹

On December 15, 1995 the Office of Workers' Compensation Programs issued a schedule award for a two percent permanent impairment of the right arm.

The schedule award provisions of the Federal Employees' Compensation Act provide for compensation to employees sustaining impairment from loss, or loss of use, of specified members of the body.² The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office.³ For consistent results and to ensure equal justice, the Board has authorized 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*

¹ The employing establishment noted that appellant's position as a distribution clerk was to accommodate work restrictions as a result of his cardiac infarction.

² 5 U.S.C. § 8107.

³ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387(1977).

Evaluation of Permanent Impairment has been adopted by the Office as a standard for evaluation of schedule losses, and the Board has concurred in such adoption.⁴

With respect to his claim for a schedule award, appellant submitted multiple medical reports from Dr. Dennis C. Stepro, his treating physician who is a Board-certified orthopedic surgeon. In a February 1, 1994 medical report, Dr. Stepro stated that appellant's pain with flexion and abduction had lessened, noting that his range of motion was nearly full. He noted that appellant "will continue with some restrictions at work." In a March 8, 1994 medical report, Dr. Stepro stated that appellant had regained full range of motion, had good strength but still had impingement pain at the same level as he had prior to surgery. In an April 21, 1994 medical report, Dr. Stepro stated that appellant continued to have a moderate positive impingement sign and mild limitation of shoulder motion. Appellant continued at work with the same limitations. In an October 3, 1994 medical report, Dr. Stepro noted no change since appellant's last examination, stating that he had pain and tenderness in the area of the greater tuberosity, and positive impingement maximally at 90 degrees flexion and abduction. In a medical report dated July 10, 1995, Dr. Stepro stated that appellant was 20 months post surgery of the right shoulder with arthroscopic subacromial decompression. He noted that appellant had had continuous shoulder pain and limited use of his shoulder since his surgery. Dr. Stepro stated that appellant "cannot adduct the shoulder past 90 degrees without disabling pain," and therefore recommended an impairment rating of 4 percent. He noted that he based his calculation on the A.M.A., *Guides* (4th ed. 1993). However, Dr. Stepro did not explain his calculations of impairment pursuant to the *Guides*.

The Office properly referred the medical evidence to an Office medical adviser for an opinion as to the percentage of permanent impairment under the *Guides*.⁵ In a memorandum dated August 9, 1995, the Office medical adviser correctly noted that Dr. Stepro reported on February 1, 1994 that appellant's range of motion was nearly full, and that on March 8, 1994 that he had regained full motion. He therefore noted that because Dr. Stepro was unable to substantiate a specific range of motion limitation of the right shoulder and did not identify any muscle weakness or atrophy, no impairment would be applicable on that basis. The Office medical adviser noted that appellant's date of maximum medical improvement was February 1, 1994, the date that Dr. Stepro indicated that appellant could return to work with lifting restrictions which have remained unchanged. The Office medical adviser stated that, on the basis of Dr. Stepro's finding of continuous shoulder pain, appellant would be entitled to a two percent impairment of the right shoulder.

The Board finds no probative medical evidence that indicates appellant has more than a two percent permanent impairment of the right arm.

The decision of the Office of Workers' Compensation Programs dated December 15, 1995 is affirmed.

⁴ *Luis Chapa, Jr.*, 41 ECAB 159 (1989).

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995) (Medical evidence should be sent to an Office medical adviser for calculation of permanent impairment under the A.M.A., *Guides*).

Dated, Washington, D.C.
January 27, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member