

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNARD J. HOSCHEID and U.S. POSTAL SERVICE,
POST OFFICE, Mendota, Ill.

*Docket No. 96-1540; Submitted on the Record;
Issued June 22, 1998*

DECISION and ORDER

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

The issue is whether appellant has greater than 16 percent permanent loss of use of his right arm.

The Board has duly reviewed the case record and finds that the medical evidence of record does not establish that appellant has more than a 16 percent permanent impairment of his right arm.

This case has previously been on appeal before the Board. By decision dated January 6, 1995, the Board found that the Office of Workers' Compensation Programs did not properly develop the medical evidence in its determination that appellant had a 13 percent permanent impairment of loss of use of his right arm. The Board thereupon remanded the case to the Office to procure a supplemental report from Dr. Paul J. Belich, a Board-certified orthopedic surgeon and second opinion consultant, explaining with specific reference to the appropriate tables in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* the basis for his calculations of appellant's impairment to his right arm. The Board noted that Dr. Belich did not list range of motion for backward elevation and adduction, nor did he rate appellant's complaints of right shoulder pain, his deltoid condition or his weakened right grip. The Office also was required to have Dr. Belich explain his selection of November 1990 as the date of appellant's maximum medical improvement.

Based on the Office medical adviser's May 6, 1995 medical report,¹ the Office determined that Dr. Belich's subsequent reports dated March 21 and April 10, 1995 were insufficient to determine appellant's permanent impairment inasmuch as he did not support his

¹ In a May 6, 1995 medical report, the Office medical adviser, upon review of appellant's medical records including Dr. Belich's reports, determined that appellant's zero degree extension merited a three percent permanent impairment for the upper extremity. The doctor nonetheless found Dr. Belich's medical evaluation to contain insufficient information upon which to base a recommendation for a permanent impairment.

recommended ratings with references to the A.M.A., *Guides* as requested.² The Office then referred appellant, a copy of his medical record and a statement of accepted facts to Dr. James W. Milgram, a Board-certified orthopedic surgeon, to evaluate appellant for the purposes of establishing whether he had sustained a permanent impairment of the upper right extremity, whether appellant had any weakness in the deltoid muscle, whether appellant had sustained a weakened grip on the right side as a result of his accepted shoulder injury, and whether appellant had reached the date of maximum medical improvement. In a medical report dated July 21, 1995, Dr. Milgram evaluated appellant but declined to recommend a permanent rating because the doctor believed that additional diagnostic tests were necessary. He noted however that appellant probably continued to have some rotator cuff deficit.

On October 26, 1995 the Office referred appellant to Dr. Louis L. Watson, a Board-certified orthopedic surgeon, for further evaluation.

In a medical report dated November 30, 1995, Dr. Watson stated that he had evaluated appellant and determined that that his right arm extended 100 degrees, that he had full flexion; that abduction was 100 degrees and adduction was 15 degrees. He also stated that internal rotation was full, external rotation was 30 degrees and back extension was 0 degrees. On the basis of these calculations Dr. Watson recommended a permanent impairment rating of 25 percent for loss of use of the right arm. However, Dr. Watson did not correlate his findings to the A.M.A., *Guides*, and therefore his opinion is of limited probative value.

The Office then requested that an Office medical adviser review the record and determine appellant's permanent impairment pursuant to the A.M.A., *Guides*. In a report dated January 7, 1996, Dr. Arthur H. Conley, an orthopedic surgeon and an Office medical adviser, utilized figures 38³, 41⁴ and 44⁵ of the A.M.A., *Guides* to compute that appellant had a 9 percent permanent impairment for loss of motion of the right upper extremity. He based his rating on Dr. Watson's range of motion findings for flexion, abduction, adduction, interior rotation and exterior rotation and his May 6, 1995 extension rating. With respect to sensory deficit or pain, and motor deficit, the Office medical adviser correctly noted the maximum values from Table 15 of the A.M.A., *Guides*, and graded the impairments at four percent and four percent respectively. The four percent grading for sensory deficit or pain represents an impairment which may prevent activity, and four percent for motor activity represents an impairment based upon an ability to move the arm against gravity with some resistance.⁶ Under the A.M.A., *Guides*, these values are combined using a combined values chart rather than added together. The method for combining impairments is based on the principle that each impairment acts not on the whole part but only on the remaining portion after the preceding impairment has acted.⁷ Under the combined values

² *Charles Dionne*, 38 ECAB 306 (1986).

³ *See* A.M.A., *Guides* at 43.

⁴ *See Id.*, at 44.

⁵ *See Id.*, at 45.

⁶ *See Id.*, at 48, Table 11 and 49, Table 12.

⁷ *See Id.*, at 24, 29.; *see Isidoro Riviera*, 12 ECAB 348 (1961).

chart, 9, 4 and 4 combine for a 16 percent permanent impairment.⁸ The medical evidence of record, therefore, does not establish more than a 16 percent permanent impairment to the upper right extremity in this case. The Office medical adviser noted that appellant's date of maximum medical improvement was February 2, 1992.⁹

In a January 18, 1996 decision, the Office granted appellant a schedule award for an additional 3 percent for permanent impairment of the right arm noting that he had been previously awarded a 13 percent permanent impairment of the right arm. The award ran from February 11 to April 16, 1992 for a total of 9.36 weeks. There is no medical evidence of record establishing that appellant has greater than a 16 percent impairment of the right arm, for which he has received appropriate compensation.

The decision of the Office of Workers' Compensation Programs dated January 18, 1996 is affirmed.

Dated, Washington, D.C.
June 22, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁸ See *Id.*, at 322, combined values chart.

⁹ The Office requested Dr. Conley to explain his reasoning for the date of appellant's maximum medical improvement only if he disagreed with February 11, 1992 as the date of maximum medical improvement.