

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. KELLEY and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, ILL

*Docket No. 96-1567; Submitted on the Record;
Issued May 14, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he has greater than a 10 percent permanent impairment of the right upper extremity, for which he received a schedule award.

On September 9, 1992 appellant, a 53-year-old tractor trailer operator, injured his right shoulder while walking on a cat walk at the employing establishment. Appellant filed a Form CA-1 claim for continuation of pay on September 9, 1992, which the Office of Workers' Compensation Programs accepted by letter dated November 4, 1992, for right elbow and right shoulder contusion.

By letter dated February 15, 1993, Dr. Robert A. Miller, appellant's treating physician and a Board-certified orthopedic surgeon, noted that the results of a magnetic resonance imaging (MRI) test indicated a full thickness tear of the rotator cuff, with some retraction of the tendon into the right shoulder, and recommended that appellant undergo surgery to repair this condition. In an undated letter, the Office accepted appellant's claim for right rotator cuff tear, and authorized the corrective surgery recommended by Dr. Miller. Dr. Miller performed the surgery on March 27, 1993.

On July 3, 1994 appellant filed a Form CA-7 claim for a schedule award based on partial loss of use of his right upper extremity.

In a letter dated July 15, 1994, the Office arranged an appointment for appellant with Dr. Miller to determine the extent of his permanent partial impairment based on loss of use of his right upper extremity due to the May 17, 1994 employment injury.

On February 28, 1995 Dr. Miller examined appellant to calculate an impairment rating based on appellant's accepted right shoulder injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition). In a Form CA-1303-05 dated February 28, 1995, Dr. Miller found that appellant retained 35 degrees

internal rotation, 35 degrees external rotation, 180 degrees forward elevation, 40 degrees backward elevation, and 180 degrees abduction of the right upper extremity. Based on these findings, Dr. Miller recommended a 20 percent impairment of appellant's right upper extremity. Dr. Miller also found that appellant reached maximum medical improvement on May 28, 1993.

In a treatment note dated February 28, 1995, Dr. Miller stated that appellant informed him that his shoulder was doing very well, and Dr. Miller indicated that he had a good range of motion with "excellent strength."

On August 25, 1995 an Office medical adviser, Dr. A.H Conley, a specialist in orthopedic surgery, reviewed appellant's medical records and determined that appellant had a 10 percent permanent impairment for loss of use of his right upper extremity. Dr. Conley calculated that 180 degrees forward elevation and 40 degrees backward elevation accounted for a 1 percent impairment of the right upper extremity pursuant to page 43, figure 38 of the *Guides*; that a 180 degrees abduction accounted for a 0 percent impairment of the upper extremity pursuant to page 44, figure 41 of the *Guides*; and that 35 degrees internal rotation and 35 degrees external rotation accounted for a 5 percent impairment of the upper extremity according to page 45, figure 44 of the *Guides*, which totaled a 6 percent upper extremity impairment.

Dr. Conley further stated that Dr. Miller, in his February 28, 1995 evaluation, made no specific reference to grade of weakness or severity of pain. However, Dr. Conley noted that in his February 28, 1995 narrative notes Dr. Miller indicated "excellent strength", and he therefore found that any residual weakness was assumed to be relatively minor. Based on these notes, Dr. Conley accorded appellant a grade 4, or 25 percent of the maximum of 16 percent, for supescapular nerve motor function pursuant to page 49, Table 12 and page 54, Table 15, for an additional 4 percent permanent impairment. Accordingly, Dr. Conley concluded that the total impairment for appellant's right upper extremity pursuant to page 322 of the *Guides* amounted to 10 percent. Dr. Conley adopted Dr. Miller's finding that appellant reached maximum medical improvement on May 28, 1993.

On November 22, 1995 the Office granted appellant a schedule award for a 10 percent permanent impairment of the right upper extremity for the period May 28, 1993 to January 1, 1994, for a total of 31.20 weeks of compensation.

The Board finds that appellant has no more than a 10 percent permanent impairment for loss of use of his right upper extremity, for which he has received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, neither the Act nor its regulations specify the manner in which

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.⁴

In the instant case, the Office medical adviser determined that appellant had a 10 percent permanent impairment of his right upper extremity by adopting the findings of Dr. Miller, appellant's treating physician, regarding appellant's range of motion and degree of strength in his right upper extremity, and determining the precise impairment rating based on the applicable figures and table of the *Guides*.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 10 percent permanent impairment for loss of use of the right upper extremity, for which he has received a schedule award, and that appellant has failed to provide probative, supportable medical evidence that he has greater than the 10 percent impairment already awarded.

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 22, 1995 is hereby affirmed.

Dated, Washington, D.C.
May 14, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁴ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).