

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MILO G. MARTIN and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Baltimore, Md.

*Docket No. 97-884; Submitted on the Record;  
Issued November 25, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained greater than a 38 percent permanent 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 a 38 percent permanent impairment of the left upper extremity.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> 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 Impairment*<sup>3</sup> (hereinafter A.M.A., *Guides*) have been adopted by the Office of Workers' Compensation Programs and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup>

The facts in this case indicate that on November 27, 1992 appellant, then a 46-year-old motor vehicle operator, sustained employment-related conditions of cervical strain, contusion of the left shoulder and an aggravation of a preexisting rotator cuff injury. The Office, by decision

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993).

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

dated October 24, 1996, granted appellant a schedule award for 38 percent permanent impairment of the left upper extremity.

The relevant medical evidence indicates that, at the request of the Office, appellant was referred to Dr. Robert C. Abrams, a Board-certified orthopedic surgeon, for an evaluation of permanent partial impairment. By report dated September 16, 1993, Dr. Abrams provided the Office with the results of his evaluation. On examination, the range of motion in appellant's shoulder was reported as: flexion right 180 degrees, left 145 degrees; and abduction right 180 degrees, left 130 degrees. Internal rotation of the right shoulder was normal. Internal rotation of the left shoulder lacked 10 degrees. Extension of the right shoulder was 70 degrees. Extension of the left shoulder was 45 degrees. External rotation of the right shoulder was 70 degrees. External rotation of the left shoulder was 45 degrees. Utilizing the A.M.A., *Guides*, 3<sup>d</sup> Edition, Dr. Abrams opined that appellant had sustained a 56 percent permanent impairment of the left upper extremity.

In a February 18, 1994 letter, the Office scheduled a second opinion examination with Dr. Magdi H. G. Henein, a Board-certified orthopedic surgeon. In a March 17, 1994 report, Dr. Henein diagnosed musculoligamentous sprain-strain of the cervical spine, post-traumatic stiffness of the left shoulder. Examination of the left shoulder revealed an anterior surgical scar. Ranges of motion was forward elevation: 130 degrees; backward elevation: 30 degrees; abduction: 130 degrees; adduction: 30 degrees; internal rotation: 30 degrees; external rotation: 70 degrees. Utilizing the A.M.A., *Guides*, Dr. Henein stated that appellant had an 8 percent permanent impairment of his left upper extremity due to limited ranges of motion. Adding pain and weakness, Dr. Henein opined that appellant had an additional 8 percent permanent impairment of his left upper extremity. Thus, Dr. Henein opined that appellant had a total impairment of 16 percent permanent impairment of his left upper extremity. Dr. Henein also stated that since appellant had a preexisting rotator cuff injury, he opined that 50 percent of the above disability predated his injury.

In a February 8, 1995 report, the Office medical Director reported that the rating given by Dr. Henein could not be verified as the physician did not give page and table citations from the A.M.A., *Guides*.

By letter dated March 1, 1995, the Office requested clarification from Dr. Henein. No response was received.

In a December 27, 1993 report, Dr. Eli M. Lippman, a Board-certified orthopedic surgeon, examined appellant and diagnosed rotator cuff repair with acromioplasty, left shoulder. On examination of the left upper extremity, there was a postoperative scar over the anterior aspect, approximately three inches. There was loss of tone in the muscles. There was crepitation on motion testing. Forward flexion was limited 30 degrees. Backward flexion was limited 20 degrees. Abduction was 90 degrees. Adduction was 10 degrees. External rotation was 15 degrees. Internal rotation was 15 degrees. Utilizing the A.M.A., *Guides*, 4<sup>th</sup> Edition, Dr. Lippman found a 23 percent loss which comprised of: forward flexion loss of 10 percent and backward flexion loss of 2 percent (Table 38, Page 3/43); abduction loss of 4 percent and adduction loss of 1 percent (Table 41, Page 3/44); external rotation loss of 1½ percent and internal rotation loss of 4½ percent (Table 44, Page 3/45). Dr. Lippman also found that appellant

had pain, loss of endurance and strength, which equated to a 20 percent loss. Dr. Lippman combined the 23 percent loss of motion with the 20 percent loss from the neurological deficits to find a 43 percent permanent impairment of the left upper extremity.

In an October 18, 1996 report, an Office medical Director reviewed the December 27, 1993 report of Dr. Lippman, the March 17, 1994 report of Dr. Henein, and the September 16, 1993 report of Dr. Abrams. She further indicated that Dr. Lippman's report was used in the calculation of physical impairment as the report was comprehensive, clear and in keeping with the A.M.A., *Guides*, while the other reports were not as complete. It was additionally noted that the date of Dr. Lippman's report constituted the date of maximum improvement. The medical Director stated that utilizing Figures 38 (3/43), 41 (3/44), 44 (3/45), Tables 11 (3/48), 12 (3/49) and 14 (3/52) in the A.M.A., *Guides*, 4<sup>th</sup> Edition, as well as the measurements listed in Dr. Lippman's report, a 23 percent range of motion comprised of: 30 degrees forward flexion equated to a 10 percent impairment; 20 degrees backward flexion equated to a 2 percent impairment; 90 degrees abduction equated to a 4 percent impairment; 10 degrees adduction equated to a 1 percent impairment; 15 degrees external rotation equated to a 1.5 percent impairment; 15 degrees internal rotation equated to a 4.5 percent impairment. Added to the 23 percent range of motion was the combined defects of the brachial plexus comprised of sensory loss/pain Grade II 5 percent times 25 percent, which equates to a 1.25 percent impairment and motor/strength Grade IV 25 percent times 75 percent, which equates to a 18.75 percent for a total neurologic impairment of 20 percent. Combining the range of motion and the neurological deficits values, a total impairment value of the upper extremity was equated to be 38 percent (Combined Values Chart, p. 322).

The Board finds that the Office medical Director properly used the fourth edition of the A.M.A., *Guides* to rate appellant's permanent impairment. Dr. Abrams opined that appellant had sustained a 56 percent permanent impairment, his opinion is incomplete and of diminished probative value as he failed to take into account appellant's pain and weakness, which the other physicians of record noted and calculated for. Moreover, Dr. Abrams did not explain how he applied the A.M.A., *Guides*, and he did not address when appellant reached maximum medical improvement. While Dr. Henein advised that appellant had a 16 percent permanent impairment of the left upper extremity, his opinion is of diminished probative value as he did not explain the basis of his rating by providing the appropriate references to the A.M.A., *Guides*. The Office medical adviser explained her conclusion that appellant sustained a 38 percent permanent impairment of the left upper extremity pursuant to the A.M.A., *Guides*. There is no evidence which establishes that, pursuant to the A.M.A., *Guides*, appellant is entitled to a higher degree of impairment than calculated by the Office medical adviser. The Office medical adviser reviewed the medical record, referred to specific provision in the A.M.A., *Guides*, and found that appellant had no more than a 38 percent left upper extremity impairment after combining the 23 percent range of motion impairment rating with 20 percent neurological impairment rating and doing the appropriate conversion in the Combined Values Chart as set forth in the A.M.A., *Guides* for determining a brachial plexus-related impairment percentage. The Office medical adviser's measurements were derived from Dr. Lippman's report. Unlike the Office medical adviser, Dr. Lippman failed to combine the sensory and motor impairments by utilizing the values derived from the Combined Values Chart, p. 322. As the medical adviser indicated how she calculated impairment pursuant to the A.M.A., *Guides*, the Board finds the Office properly

followed the advise of its medical adviser in granting appellant a schedule award for a 38 percent permanent impairment of the upper left extremity.<sup>5</sup>

The decision of the Office of Workers' Compensation Programs dated October 24, 1996 is hereby affirmed.

Dated, Washington, D.C.  
November 25, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> See *Luis Chapa, Jr.*, 41 ECAB 159 (1989).