

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY ARMENTO and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, Calif.

*Docket No. 97-133; Submitted on the Record;
Issued October 19, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he is entitled to an additional schedule award for more than a 51 percent permanent impairment of the left upper extremity.

The Board has duly reviewed the case record and finds that appellant is not entitled to an additional schedule award.

The Office of Workers' Compensation Programs accepted that appellant sustained a left shoulder contusion, partial fibrous ankylosis of the left acromioclavicular joint and cervical spondylosis as a result of a traumatic injury on September 17, 1975. By decision dated June 6, 1978, the Office granted appellant a schedule award for a 21 percent permanent loss of use of his left arm. The period of the award ran for 65.52 weeks from February 13, 1978 to May 17, 1979. On June 12, 1985 appellant submitted a claim for an additional schedule award. By decision dated September 29, 1985, the Office granted appellant a schedule award for an additional 30 percent impairment of his left arm. The period of the award ran for 93.60 weeks from April 14, 1986 to January 29, 1988.

On August 1, 1994 appellant submitted a claim for an additional schedule award. By decision dated May 15, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish that he had more than a 51 percent impairment of his left upper extremity.

Under section 8107 of the Federal Employees' Compensation Act,¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

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*, have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

In a report dated March 29, 1995, Dr. Paul P. DiMartino, a Board-certified orthopedic surgeon and appellant's attending physician, noted his continued complaint of "[c]onstant left-sided neck pain with radiation across the left trapezius and down the left arm into the hand." He stated that appellant's range of motion of the left shoulder was approximately 30 percent in all directions. He concluded that appellant's condition remained stationary.

On December 15, 1995 Dr. DiMartino completed an Office form report and found that, for the left shoulder, appellant had 90 degrees abduction, 90 degrees forward elevation, 25 degrees internal rotation, 30 degrees external rotation, 20 degrees backward elevation, 15 degrees adduction, and 20 degrees extension. He found that appellant did not have a loss of strength except for that which resulted from guarding due to pain. Dr. DiMartino concluded that appellant had a 75 percent impairment of the upper extremity due to pain and listed the date of maximum medical improvement as December 15, 1995. He did not indicate how he utilized the A.M.A., *Guides* to compute appellant's percentage of impairment. Dr. DiMartino's opinion is therefore speculative and of diminished probative value.

In a report dated April 2, 1996, an Office medical consultant reviewed Dr. DiMartino's March 29 and December 13, 1995 reports and applied the appropriate tables and pages of the A.M.A., *Guides* (4th ed. 1993) to his clinical findings. The Office medical consultant determined that 90 degrees abduction constituted a 4 percent impairment,⁴ 90 degrees flexion constituted a 6 percent impairment,⁵ 25 degrees internal rotation constituted a 4 percent impairment,⁶ 30 degrees external rotation constituted a 1 percent impairment,⁷ 20 degrees extension constituted a 2 percent impairment,⁸ and 15 degrees adduction constituted a 1 percent impairment.⁹ She correctly added the values to find that appellant had a total impairment due to loss of range of motion of 18 percent.¹⁰ The Office medical consultant noted that appellant's subjective

³ *James J. Hjort*, 45 ECAB 595 (1994).

⁴ A.M.A., *Guides* 44, figure 41.

⁵ *Id.* at 43, figure 38.

⁶ *Id.* at 45, figure 44.

⁷ *Id.* at 45, figure 44.

⁸ *Id.* at 43, figure 38.

⁹ *Id.* at 44, figure 41.

¹⁰ *Id.* at 45.

complaints would be graded as a maximal 60 percent grade impairment of the ulnar nerve.¹¹ She then calculated that, pursuant to Table 15 on page 54 of the A.M.A., *Guides*, the maximum 7 percent impairment of the ulnar nerve, multiplied by the 60 percent impairment grade would result in a 4 percent impairment for loss of function due to pain. She combined the 18 percent impairment due to loss of range of motion with the 4 percent impairment due to pain using the Combined Values Chart to reach a total impairment of the left upper extremity of 21 percent.¹²

The Board finds that the report of the Office medical consultant is based on an appropriate use of the A.M.A., *Guides* and represents the weight of the evidence. Thus, appellant has not established that he is entitled to a schedule award for more than a 51 percent impairment of his left upper extremity.

The decision of the Office of Workers' Compensation Programs dated May 15, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 19, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹¹ *Id.* at 48, Table 11.

¹² *Id.* at 49, 322.