

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARVEY E. DuPERRY and U.S. POSTAL SERVICE,
ANNEX STATION, Providence, R.I.

*Docket No. 97-263; Submitted on the Record;
Issued October 6, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to a schedule award greater than the 10 percent he received for permanent impairment of his right upper extremity.

On April 1, 1993 appellant, then 45-year-old letter carrier, filed a notice of traumatic injury, claiming that he was hit on the right elbow by a mail container that was pushed into him. Appellant's previous claim, filed on December 21, 1991, was accepted by the Office of Workers' Compensation Programs for a right elbow contusion. A recurrence of disability on October 7, 1992 was also accepted for lateral epicondylitis.¹ Appellant returned to limited duty on July 20, 1993 following surgery to repair his right elbow.

On March 10, 1994 the Office issued a schedule award for nine percent permanent impairment of the right upper extremity. The award ran from November 22, 1993 to June 6, 1994 and was based on the reports of Dr. Edward Akelman, Board-certified in family practice, and the Office medical adviser.² Subsequently, appellant had surgery for radial nerve compression and requested an additional schedule award.

On May 6, 1996 the Office issued a one percent additional schedule award for loss of use of the right arm. Appellant timely requested reconsideration on the grounds that Dr. Akelman, responding to the Office's request, had found a 15 percent impairment based on both conditions, and that appellant was thus entitled to an additional 6 percent award.

On August 14, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant review of the prior

¹ Epicondylitis is inflammation of the epicondyle or of the tissues adjoining the condyle (the articular prominence of a bone). *DORLAND'S ILLUSTRATED Medical Dictionary* (27th ed. 1988).

² The Office also accepted a recurrence of disability from February 24 through March 14, 1994.

decision. The Office noted that Dr. Akelman's December 15 and 16, 1996 reports had been considered.

The Board finds that appellant is entitled to no more than a 10 percent schedule award for permanent impairment of his right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.304 of the implementing federal regulations,⁴ schedule awards are payable for the permanent impairment of specified bodily members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁵

However, neither the Act nor the regulations specify the method by which the percentage of impairment shall be determined.⁶ The method used in making such determinations rests in the sound discretion of the Office.⁷ For consistent results and to ensure equal justice for all claimants, the Office has adopted, and the Board has approved, the use of the appropriate edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.⁸

In this case, the Office medical adviser properly applied the A.M.A., *Guides* in calculating the additional percentage of impairment of appellant's right elbow. He noted appellant's discharge from medical treatment on December 15, 1995 following surgical repair of the right extensor tendon and radial nerve release on April 20, 1995. The Office medical adviser stated that using Table 15, page 54, of the 4th edition of the A.M.A., *Guides*, the maximum percent of upper extremity impairment due to sensory deficit or pain involving the radial nerve was 5 percent. Table 11, Grade 2, on page 48 shows a 25 percent sensory deficit, which results in a 1 percent impairment of the right upper extremity due to pain from radial nerve compression. The Office medical adviser added that this one percent was in addition to the nine percent impairment already awarded. The medical adviser noted that the nine percent impairment of the right upper extremity that existed following the right lateral epicondylectomy on May 26, 1993 was still applicable. He noted that the nine percent impairment was based on Table 15, page 54, Table 11, page 48 and Table 12, page 49 and the Combined Values Chart, page 322.

³ 5 U.S.C. § 8101 *et seq.* (1974); 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.304.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ *A. George Lampo*, 45 ECAB 441, 443 (1994).

⁷ *George E. Williams*, 44 ECAB 530, 532 (1993).

⁸ *James J. Hjort*, 45 ECAB 595, 599 (1994).

By contrast, in his December 15, 1995 report Dr. Akelman found a 15 percent impairment of appellant's right elbow due to both his lateral epicondylitis and radial nerve compression, but failed to explain what tables in the A.M.A., *Guides* he used to arrive at a 15 percent permanent impairment. Dr. Akelman noted 130 degrees of retained active flexion and 90 degrees of both pronation and supination, but neglected to correlate these findings with any criteria under the A.M.A., *Guides*. Therefore, his conclusion of an additional 6 percent impairment has little probative value.

Inasmuch as it is claimant's burden to provide medical evidence establishing his entitlement to a schedule award, and the medical evidence in this case supports no rating greater than the 10 percent schedule award already received by appellant, the Board finds that the Office properly determined that appellant was entitled to no more than a 10 percent impairment rating.⁹

The August 14 and May 6, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.

October 6, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁹ See *Lena P. Huntley*, 46 ECAB 643, 646 (1995) (finding that the Office medical adviser's proper application of the A.M.A., *Guides* constituted the weight of the medical evidence).