

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRACE DESROCHES and DEPARTMENT OF THE ARMY,
Fort Dix, N.J.

*Docket No. 97-1149; Submitted on the Record;
Issued February 25, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 10 percent permanent impairment of her left arm.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a fracture of the left arm in the performance of duty on May 21, 1993. By decision dated November 2, 1995, the Office issued a schedule award for a 10 percent permanent impairment to the left arm. Appellant received 31.20 weeks of compensation commencing June 28, 1994. By decision dated November 26, 1996, an Office hearing representative affirmed the prior decision.

The Board has reviewed the record and finds that appellant has not established more than a 10 percent permanent impairment to the left arm.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner, in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

² A. George Lampo, 45 ECAB 441 (1994).

In this case, an attending osteopath, Dr. David Weiss, provided a history and results on examination in a report dated June 28, 1994. Dr. Weiss reported range of motion in the left shoulder as follows: 90 degrees of flexion, 75 degrees of extension, 90 degrees abduction and 75 degrees adduction. He noted crepitus on active range of motion. With regard to a permanent impairment, Dr. Weiss calculated 6 percent for loss of flexion, 4 percent for loss of abduction and 12 percent for crepitance, for a total of 22 percent for the left arm.

The Board notes that Dr. Weiss properly identified the appropriate figures in the *Guides* and calculated the impairment for loss of range of motion.³ Although Dr. Weiss also identifies the tables for impairment due to joint crepitation, he does not indicate how the tables were applied to result in a 12 percent impairment. Table 19 requires that the severity of the impairment be graded as mild, moderate, or severe and then the appropriate percentage value is applied to the maximum value of the specific joint identified in Table 18.⁴

Moreover, the *Guides* caution that the evaluator must avoid duplication of impairment when there is crepitation and other findings such as limited motion.⁵ The Office has specifically indicated that Table 19 is not to be used in conjunction with Figures 19 to 44.⁶ The Board finds that the 22 percent impairment calculated by Dr. Weiss is not sufficient to establish the percentage of impairment in this case, because he did not adequately explain how the crepitance impairment was calculated and improperly combined the impairment with loss of range of motion.

In a memorandum dated August 7, 1995, an Office medical adviser indicated that the impairment for loss of range of motion was 10 percent, as reported by Dr. Weiss. The medical adviser noted that Table 19 was not to be used in conjunction with range of motion and he concluded that appellant had a 10 percent permanent impairment. The Board finds that this represents the probative evidence of record as to the degree of permanent impairment to the left arm. The medical adviser properly calculated the impairment due to loss of motion based on the report from Dr. Weiss and did not combine the impairment with joint crepitation impairment. There is no probative evidence establishing that appellant had more than a 10 percent impairment under the *Guides* in this case. The maximum award for loss of use of the arm is 312 weeks of compensation,⁷ and, therefore, appellant is entitled to 10 percent, or 31.20 weeks of compensation. The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁸ In this case the date of maximum medical improvement is June 28, 1994, the date of the report by Dr. Weiss.

³ A.M.A., *Guides* (4th ed. 1993), 43, Figure 38 and 44, Figure 39.

⁴ *Id.* at 59, Table 19 and 58, Table 18.

⁵ *Id.* at 58.

⁶ FECA Bulletin No. 95-17 (issued March 23, 1995).

⁷ 5 U.S.C. § 8107(c)(1).

⁸ *Albert Valverde*, 36 ECAB 233, 237 (1984).

The decision of the Office of Workers' Compensation Programs dated November 26, 1996 is affirmed.

Dated, Washington, D.C.
February 25, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member