

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM L. SIMMONS, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, Fla.

*Docket No. 97-1240; Submitted on the Record;
Issued February 4, 1999*

DECISION and ORDER

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

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

The Office of Workers' Compensation Programs accepted that on September 29, 1995 appellant sustained right shoulder strain and thereafter he underwent a right rotator cuff repair. Following surgery appellant required immobilization, and on February 13, 1996 physical and neuromuscular therapy was initiated. On examination appellant was found to have adhesions in the arm and shoulder area with hypercontraction of the biceps and deltoid muscles. On August 27, 1996 appellant requested a schedule award for permanent impairment of his right upper extremity.

In a July 9, 1996 Office note, Dr. Fady El-Bahri, a Board-certified orthopedic surgeon and appellant's treating physician, indicated that appellant was at maximum medical improvement and that upon active range of right upper extremity motion, flexion lacked 5 degrees and abduction lacked 10 degrees. Upon passive range of motion Dr. El-Bahri found that external rotation was 45 degrees and internal rotation was full. He also noted that appellant complained of some stiffness of the right shoulder and a twinge in the joint with movement.

On July 10, 1996 Dr. El-Bahri opined that appellant had a 16 percent impairment of the right upper extremity or a 10 percent impairment of the whole person.

The Office referred Dr. El-Bahri's report to an Office medical adviser for an impairment calculation in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The Office medical adviser calculated that appellant had only a two percent impairment of the right upper extremity based upon losses in range of motion.

On December 4, 1996 the Office requested that Dr. El-Bahri clarify his findings and explain how he arrived at his rating in accordance with the A.M.A., *Guides*.

By report dated December 26, 1996, Dr. El-Bahri stated that he used the A.M.A., *Guides*, fourth edition, page 59, Table 18 and Table 19 for rating appellant's mild crepitation and combined this rating with appellant's loss of range of motion rating, then used Table 3, page 20 to give appellant a 16 percent impairment rating of the right arm, or a 10 percent impairment rating of the whole person.

On January 22, 1997 the Office medical adviser referred to the Federal Employees' Compensation Act's Bulletin 95-17 regarding which tables may or may not be combined with each other to calculate an impairment rating, noted that impairment for joint crepitation, Table 19, page 59, may not be combined with ratings for loss of range of motion, figures 38, 41 and 44, calculated that impairment for loss of range of motion was 2 percent but that impairment for mild crepitation was 6 percent and used the larger impairment rating to determine appellant's permanent impairment. The Office medical adviser arrived at the 6 percent impairment for the right upper extremity by taking the 10 percent impairment of the involved joint for mild crepitation and multiplying it times 60 percent, the maximum allowable for the glenohumeral joint, in accordance with directions from the A.M.A., *Guides*.

On February 3, 1997 the Office granted appellant a schedule award for a six percent permanent impairment of his right upper extremity.

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

The schedule award provision of the 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 the percentage of loss 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* has been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.⁴

Although appellant's physician, Dr. El-Bahri used the A.M.A., *Guides* to arrive at the 16 percent upper extremity impairment rating, he calculated this impairment by combining values from two tables which are not combinable according to the A.M.A., *Guides* (fourth edition). This was also pointed out in the FECA Bulletin 95-17, issued March 23, 1995, which discusses alternatives in calculation of an impairment for schedule award purposes. The FECA Bulletin 95-17 addresses impairments calculated using tables with overlapping applications, leading to

¹ 5 U.S.C § 8101 *et seq.*; see 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

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

impairment percentages which greatly overstate the actual degree of impairment. It lists impairment tables which are incompatible, and makes clear that impairment ratings from Table 19, impairment from joint crepitation, cannot be combined with ratings for loss of range of motion, figures 38, 41 and 44, pages 33-45. However, appellant's physician stated that was exactly what he did, combining impairment values for joint crepitation with impairment values for losses in range of motion to reach the 16 percent impairment, which is a calculation not in accordance with the A.M.A., *Guides* or the FECA Bulletin 95-17. Consequently, this calculation greatly overstates appellant's impairment and is therefore of greatly diminished probative value.

The Office medical adviser, however, correctly applied the A.M.A., *Guides*, and determined that appellant's impairment rating for loss of range of motion was two percent, and determined that his impairment for joint crepitation was six percent, which was larger and accordingly determined that appellant was entitled to a schedule award for a six percent permanent impairment of his right upper extremity. No other probative medical evidence properly utilizing the A.M.A., *Guides* was submitted to the record which supports that appellant had any greater degree of permanent impairment of his right upper extremity, and consequently the Board finds that the determination made by the Office medical adviser and the award granted by the Office are correct under the facts and law of this case.

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 3, 1997 is hereby affirmed.

Dated, Washington, D.C.
February 4, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member