

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of HAZEL C. EVANS and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Oklahoma City, Okla.

*Docket No. 97-910; Submitted on the Record;  
Issued January 7, 1999*

---

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has greater than an eight percent permanent impairment of her left upper extremity for which she received a schedule award.

Appellant filed a claim on May 26, 1995 alleging that she broke her left arm when she fell rushing to answer the telephone. The Office of Workers' Compensation Programs accepted appellant's claim for a left arm fracture on June 27, 1995. Appellant requested a schedule award on June 13, 1996.

In a report dated June 18, 1996, Dr. Griffith C. Miller stated:

“Due to the limitation of flexion, due to the fact that she can only flex to 110 degrees, she has 6 [percent] permanent -- disability to the left arm. Due to the fact that she can only extend to 140 degrees, she has 42 percent permanent partial disability to the left arm. These combine to give her 45 [percent] permanent -- disability to the left arm as a result of her left arm injury. There is no impairment due to any nerve injury or inability to supinate fully.”

Dr. Miller provided no grip strength measurements for appellant. He stated that his evaluation was based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed.), but did not refer to specific tables or figures used in arriving at his calculation.

In a report dated July 10, 1996, the Office medical adviser reviewed Dr. Miller's June 18, 1996 report on July 10, 1996 and found that Dr. Miller's report was not probative as he “used erroneous impairment values for loss of motion of the left elbow, and because he did not include reduced strength in the left arm and hand.” He requested that appellant be referred for an examination with a specialist familiar with the A.M.A., *Guides*.

The Office referred appellant, a statement of accepted facts, medical records and a list of questions, to Dr. James E. Winslow, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation of appellant's permanent impairment. In a report dated September 26, 1996, Dr. Winslow noted the history of appellant's injury and the medical treatment. He provided the following findings on physical examination:

“[S]he lacks 20 degrees of extension. She flexes to 100 degrees. She has full pro and supination. There is no swelling in the elbow. There is no particular tenderness about the elbow. There is excellent power and the biceps, brachialis and brachialis musculature and triceps musculature and the pro and supination power have returned to near normal levels for the nondominant. The patient has a few ulnar nerve symptoms in that she has some tingling in the little finger which she thinks has change (sic) little, if any, since the time of the fall, but she has no intrinsic atrophy and her first dorsal interosseous certainly functions in the normal range.”

Dr. Winslow, using the A.M.A., *Guides*, calculated appellant's impairment as 19 percent of the extremity. Dr. Winslow arrived at that calculation by noting that appellant's “loss of flexion represents 20 percent of the function of the elbow, loss of extension represents 5 percent of the elbow function and from the combined values chart, page 322, this represents 20 percent loss of function to the elbow.” He noted that “[t]he elbow joint represents 70 percent of the upper extremity, therefore, it is 27 percent times 70 percent which is equivalent to 19 percent of the extremity which is equivalent to 11 percent of the whole person.”<sup>1</sup>

In a report dated November 27, 1996, an Office medical adviser reviewed Dr. Winslow's report and found that appellant had a left upper extremity impairment of six percent for loss of motion of the elbow<sup>2</sup> and two percent impairment for ulnar nerve sensory loss at the elbow<sup>3</sup> for a total of eight percent impairment.<sup>4</sup>

By decision dated December 9, 1996, the Office granted appellant a schedule award for an eight percent permanent impairment of the left upper extremity to run from June 18 to December 9, 1996.

The Board finds that appellant has no more than an eight percent permanent impairment of her left upper extremity for which she received a schedule award.

---

<sup>1</sup> Dr. Winslow mistakenly used 27 percent instead of 20 percent in calculation. Multiplying 20 percent times 70 percents equals 14 percent.

<sup>2</sup> A.M.A., *Guides*, 40, Figure 32; 41, Figure 35.

<sup>3</sup> *Id.* at 54, Table 15; 48, Table 11.

<sup>4</sup> *Id.* at 322.

Under section 8107 of the Federal Employees' Compensation Act<sup>5</sup> and section 10.304 of the implementing federal regulations,<sup>6</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 for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.<sup>7</sup>

In this case, Dr. Miller provided impairment ratings for appellant's left arm of 45 percent in his report dated June 18, 1996. He, however, did not refer to specific tables or figures in the A.M.A., *Guides* to show how he arrived at his calculation of 45 percent. In his September 26, 1996 report, Dr. Winslow provided the range of motion figures for appellant's elbow and opined that appellant had a 19 percent impairment of her upper extremity. He referred to page 39 in arriving at five percent for loss of extension. Dr. Winslow did not note which table in the A.M.A., *Guides* he relied upon when he multiplied 27 percent times 70 percent to arrive at a 19 percent impairment of the left upper extremity.

The Board finds that the November 27, 1996 report of the Office medical adviser properly applied the specific tables of the A.M.A., *Guides* in his calculation of the extent of permanent partial loss of use of appellant's left upper extremity due to loss of range of motion and nerve sensory loss. As noted above the Office medical adviser utilized the applicable tables of the A.M.A., *Guides* to the sensory and motor loss noted in Dr. Winslow's clinical findings. Accordingly, the medical evidence of record does not establish that appellant has a greater than eight percent impairment found by the Office medical adviser.

---

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.304.

<sup>7</sup> *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

The December 9, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
January 7, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member