

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of RICHARD L. WISE and DEPARTMENT OF DEFENSE,  
DEFENSE LOGISTICS AGENCY, Stockton, Calif.

*Docket No. 97-1785; Submitted on the Record;  
Issued January 27, 1999*

---

DECISION and ORDER

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

The issue is whether appellant has more than a four percent permanent impairment of the right upper extremity.

The Board has duly reviewed the record on appeal and finds that the evidence supports no more than a four percent permanent impairment.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> ("Act") and section 10.304 of the implementing federal regulations<sup>2</sup> authorize the payment of schedule awards for the loss or permanent impairment of specified members, functions or organs of the body. Neither the Act nor the regulations specify, however, how the percentage of impairment 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 standard for determining the percentage of impairment, and the Board has concurred in such adoption.<sup>3</sup>

The Office applied these standards to the clinical findings of Dr. Vance Roget, a specialist in physical medicine and rehabilitation. On May 19, 1994 Dr. Roget reported that when he last evaluated appellant, whose claim was accepted for right shoulder strain, appellant had full range of motion of the neck and full active motion and full strength on manual muscle testing of the involved right shoulder. He reported no sensory loss or alteration and no visible or measurable atrophy of the involved right upper extremity. Dr. Roget described appellant's chronic pain -- a myofascial pain involving the right posterior neck, upper trapezius and medial

---

<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> See, e.g., *Leisa D. Vassar*, 40 ECAB 1287 (1989).

scapular muscles with associated tension headaches -- as a pain that increased with activity and that precluded such activities as occasional lifting of 60 pounds or more, frequent lifting of 30 pounds, or a comparable pushing or pulling effort.

Applying the A.M.A., *Guides* (4<sup>th</sup> ed. 1995), an Office medical consultant determined from Dr. Roget's findings that appellant had no impairment due to loss of range of motion or to loss of strength. Based on Dr. Roget's description of appellant's pain, the Office medical consultant graded the severity of sensory deficit or pain as Grade 4 under Table 11, page 48, or as "decreased sensibility with or without abnormal sensation or pain, which may prevent activity, and/or minor causalgia." Such a grade represents a 60 to 80 percent sensory deficit of the involved nerve. The Office medical consultant chose the greatest percentage deficit allowed by such a grade, or 80 percent. Following the procedure set forth at Table 11, page 48, she multiplied 80 percent by the maximum impairment value of the involved axillary nerve, or 5 percent according to Table 15, page 54, thereby arriving at a 4 percent impairment of the right upper extremity due to sensory deficit or pain.

The Board finds that the Office followed standardized procedures and that the medical evidence supports no more than a four percent permanent impairment of the right upper extremity, for which appellant received a schedule award on February 5, 1997. Appellant argues on appeal that he is still under the care of his personal physician, from whom he is still receiving pain medication. Although the impairment is permanent and appellant may well continue to receive pain medication, the Act limits compensation for permanent impairment to a specified number of weeks of compensation. The Act thus limits compensation for the complete loss of an upper extremity to 312 weeks of compensation.<sup>4</sup> A 4 percent permanent impairment of an upper extremity is compensated proportionately with 12.48 weeks of compensation, which the Office awarded.<sup>5</sup>

---

<sup>4</sup> 5 U.S.C. § 8107(c)(1).

<sup>5</sup> *Id.* at § 8107(c)(19).

The February 5, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
January 27, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member