

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE M. HALEY and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

*Docket No. 97-1498; Submitted on the Record;
Issued July 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she has more than a six percent permanent impairment of her right arm for which she received a schedule award.

The Board finds that appellant did not meet her burden of proof to establish that she has more than a six percent permanent impairment of her right arm for which she received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.³

Section 8107 of the 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.⁴ 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 of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the*

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

Evaluation of Permanent Impairment (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

In the present case, the Office accepted that appellant sustained right lateral epicondylitis and adjustment reaction and paid compensation for periods of disability. Appellant claimed entitlement to a schedule award for her right arm and, by award of compensation dated March 19, 1996, the Office granted appellant a schedule award for a six percent permanent impairment of her right arm. The award ran for 18.72 weeks from December 18, 1995 to April 27, 1996. The award was based on the March 13, 1996 report of the Office's district medical consultant which applied the standards of the A.M.A., *Guides* to the findings obtained by Dr. Jerome C. Bernhoft, an attending Board-certified orthopedic surgeon. In a report dated December 18, 1995, Dr. Bernhoft reported the findings of his examination including results for range of motion testing of appellant's right shoulder, elbow and wrist.⁶

In her March 13, 1996 report, the district medical consultant properly determined that appellant had a 6 percent permanent impairment of her right arm. She correctly found that appellant was entitled to a 1 percent impairment rating for loss of shoulder flexion; a 1 percent rating for loss of shoulder extension and a 3 percent rating for loss of shoulder internal rotation.⁷ She further correctly found that appellant was entitled to a 1 percent impairment rating for sensory deficit or pain, a figure derived by multiplying 25 percent (the value for grade 2 pain) times 5 percent (the maximum value for pain associated with the axillary nerve).⁸ Appellant did not submit any medical evidence showing that she had more than a six percent permanent impairment of her right arm. As the report of the district medical consultant provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.⁹

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁶ These findings were similar to those obtained by Dr. Bernhoft in November 1994.

⁷ A.M.A., *Guides* 42-45, Figures 38, 44.

⁸ *Id.* at 48-54, Tables 11, 12 and 15.

⁹ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

The decision of the Office of Workers' Compensation Programs dated March 19, 1996 is affirmed.

Dated, Washington, D.C.
July 2, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member