

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL P. RAKOWSKI and U.S. POSTAL SERVICE,
POST OFFICE, Durango, Colo.

*Docket No. 97-2894; Submitted on the Record;
Issued July 8, 1999*

DECISION and ORDER

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

The issues are: (1) whether appellant has established that he sustained greater than an 11 percent permanent impairment of the right arm for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award for loss of his spleen in relation to his accepted May 20, 1992 employment injury.

On May 21, 1992 a traumatic injury claim was filed on behalf of appellant, then a 45-year-old clerk, as a result of injuries he sustained while in the performance of duty when he was hit by a u-cart which was struck by a train on May 20, 1992.¹ By decision dated July 2, 1992, the Office accepted appellant's claim for pneumothorax, facial fractures, lacerated spleen, concussion, cardiac contusion, multiple fractures, contusions and abrasions. By letter dated February 7, 1994, appellant filed claims for schedule awards for partial disability to his right shoulder, loss of his spleen and abdominal and facial scarring. In a letter dated April 29, 1994, the Office advised appellant that the Federal Employees' Compensation Act did not contain a provision that allowed for compensation for abdominal scarring. By letter dated June 3, 1994, the Office advised appellant that the Act also did not contain a provision that permitted compensation for the organ member spleen. By decision dated January 4, 1996, the Office denied appellant's claim for a schedule award in relation to his spleen on the grounds that the Act did not contain a provision for permanent impairment of the spleen. In a decision dated June 9, 1997, the Office issued a schedule award for an 11 percent permanent impairment of the right arm. Appellant received compensation for the period of February 22 to October 19, 1996 for a total of 34.32 weeks of compensation. By merit decision dated June 17, 1997, the Office denied appellant's request for reconsideration of the denial of a schedule award for his spleen on the grounds that the evidence submitted was not sufficient to warrant modification of its prior decision.

¹ The claim was filed by Terrence E. Hornbeck, appellant's supervisor.

The Board has duly reviewed the case record on appeal and finds that appellant has not established greater than an 11 percent impairment of his right arm.²

Section 8107 of the Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.⁵

In the present case, appellant underwent surgery on his right shoulder for excision of the right lateral clavicle on August 18, 1994. In a report dated September 18, 1995, Dr. Robert F. Goodman, appellant's treating physician and a Board-certified orthopedic surgeon, indicated that appellant's right shoulder had a flexion of 168 degrees, abduction of 170 degrees, full internal rotation and retained adduction, external rotation of 60 degrees, an extension of 74 degrees and that appellant would reach maximum medical improvement on February 22, 1996.

The Office medical adviser properly applied the fourth edition of the A.M.A., *Guides* to the September 18, 1995 report of Dr. Goodman to determine that appellant had no more than an 11 percent permanent impairment of his right arm. He noted that the 168 degree flexion of the shoulder equaled a 1 percent impairment and a 74 degree extension resulted in no impairment according to Figure 38 of the A.M.A., *Guides*.⁶ The Office medical adviser found that the 170 degree adduction had a 0 percent impairment rating under Figure 41 and the 60 degree external rotation had a 0 percent impairment rating according to Figure 44 of the A.M.A., *Guides*. Accordingly, the range of motion measurements produced a one percent impairment rating. The Office medical adviser then noted that appellant's surgery for resection arthroscopy resulted in a 10 percent impairment rating under Table 27 for a total impairment rating of 11 percent for the right arm. As the Office medical adviser properly applied the A.M.A., *Guides* and explained his calculation of the impairment, the Board finds that this report constitutes the weight of the medical opinion evidence since Dr. Goodman did not apply the A.M.A., *Guides* to his physical

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on September 15, 1997, the only decisions before the Board are the Office's June 9 and 17, 1997 decisions; see 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.304.

⁵ *Quincy E. Malone*, 31 ECAB 846 (1980).

⁶ The Office medical adviser referred to Figure 38 as Table 38. He also indicated that the measured extension was 77 degrees rather than 74 degrees. As any extension over 50 degrees does not result in an impairment, the Office medical adviser's error in the extension measurement is harmless. A.M.A., *Guides* (4th ed. 1995) page 3/43.

findings. Appellant has not established greater than an 11 percent permanent impairment of his right arm.

The Board also finds that the Office properly denied appellant's claim for a schedule award in relation to his spleen.

As the Office found, the spleen is not an organ member covered under the provisions of section 8107 of the Act. Moreover, although section 10.304(b) of the implementing regulations provides coverage for additional internal and external organs, the spleen is not designated for coverage in this regulation.⁷ Appellant has not established that he is entitled to a schedule award for loss of his spleen and the Office properly denied his claim in this regard.

The decisions of the Office of Workers' Compensation Programs dated June 9 and 17, 1997 are hereby affirmed.

Dated, Washington, D.C.
July 8, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ 20 C.F.R. § 10.304(b).