

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. MORICO and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 98-731; Submitted on the Record;
Issued July 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established entitlement to greater than 10 percent permanent impairment of his left upper extremity for which he has received a schedule award.

The Board has duly reviewed the case record in this case and finds that appellant is not entitled to more than what the Office of Workers' Compensation Programs had awarded.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.³

In this case, Dr. Peter Gee, appellant's treating physician and a Board-certified surgeon, stated that, based on a grip strength evaluation by a physical therapist, appellant had a 70 percent decrease in grip strength which resulted in a 30 percent permanent impairment of the left upper extremity, which, because appellant was right handed, resulted in a 25 percent permanent impairment. He also noted an additional 5 percent "dysfunction" as a result of permanent discomfort and occasional paresthesias which resulted in a 30 percent permanent impairment. The February 3, 1997 findings of the physical therapist as adopted by the treating physician were grip strength loss on repeated tests of 28 pounds, 18 pounds and 15 pounds. However,

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.304.

³ *James A. England*, 47 ECAB 115 (1995).

Dr. David I. Krohn, the Office medical adviser and Board-certified in internal medicine, stated that “it would be unusual ... for there to be such a degree of grip strength loss, with the claimant capable of full duty,” and recommended “an independent grip strength second opinion determination be considered” if the previous test was measured in pounds rather than kilograms.⁴ In his November 21, 1997 report on the second opinion evaluation, Dr. Krohn stated that upon further review of the February 3, 1997 grip strength test and reliance on the A.M.A., *Guides*, he noted a greater than 20 percent variation on repeated grip strength testing and thus found that appellant had not exerted full effort.⁵ Based on further reference to the *Guides*,⁶ he found a 10 percent maximum upper extremity impairment.⁷

The Board finds that the November 21, 1997 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 strength. As noted above the Office medical adviser utilized the applicable table and references of the A.M.A., *Guides* to the strength loss noted in Dr. Gee’s clinical findings. Accordingly, the medical evidence of record does not establish that appellant has a greater than 10 percent impairment found by the Office medical adviser.⁸

⁴ The physical therapist noted that she measured appellant’s grip strength loss in pounds.

⁵ A.M.A., *Guides*, 64. Tests repeated at intervals during a (grip and pinch strength) examination are considered to be reliable if there is less than 20 percent variation in the readings. If there is more than 20 percent variation, one may assume the patient is not exerting full effort.

⁶ *Id.* at 57, Table 16.

⁷ Although the Office medical adviser referred to the second opinion medical report in his November 21, 1997 report, it does not appear that he relied on this report to find a 10 percent permanent impairment of the left upper extremity.

⁸ On April 6, 1995 the Office awarded appellant a 20 percent permanent impairment of the right upper extremity.

The December 15, 1997 decision of the Office of Workers' Compensation Programs is affirmed.⁹

Dated, Washington, D.C.
July 20, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁹ The Board notes that, subsequent to the Office's December 15, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).