

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT E. STRATTON and DEPARTMENT OF THE NAVY,
NAVAL BASE, Philadelphia, Pa.

*Docket No. 97-2096; Submitted on the Record;
Issued March 29, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he has a ratable impairment of his left upper or lower extremity such that he is entitled to a schedule award.

The Board finds that appellant did not meet his burden of proof to establish that he has a ratable impairment of his left upper or lower extremity such that he is entitled to 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 he sustained an injury in the performance of duty as alleged and that his 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 an employment related left knee strain and left shoulder strain on November 28, 1994. Appellant claimed that he was entitled to a schedule award for permanent impairment of his left knee and shoulder. By decision dated April 15, 1997, the Office denied appellant's claim on the grounds that the weight of the medical evidence as represented by the opinion of Dr. B. David Grant, a Board-certified orthopedic surgeon, to whom the Office referred appellant, showed that he was not entitled to a schedule award.

As the report of Dr. Grant provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.⁶ Dr. Grant properly determined that appellant did not have a ratable permanent impairment of his left upper or lower extremity according to the relevant standards of the A.M.A., *Guides*. He reported findings of range of motion testing upon flexion, extension, abduction, adduction, external rotation and internal rotation of the left shoulder and properly noted that they were within normal values.⁷ Dr. Grant indicated that the results of impingement, tendinitis, apprehension, supraspinatus isolation testing of appellant's left shoulder were normal.⁸ He reported findings of appellant's left knee flexion and flexion contracture and properly noted that they were within normal values.⁹ Dr. Grant indicated that although appellant reported tenderness on either side of his left patella and retropatellar area, his left knee did not exhibit redness, swelling, effusion, increased heat or notable crepitation or laxity.¹⁰ He noted that the results of quadriceps inhibition, patellar apprehension, McMurray, Apley, deep knee bending and duck waddle testing were normal. Dr. Grant concluded that appellant did not have any residuals of his left shoulder and knee strains warranting the granting of a schedule award.¹¹

The record does not contain any medical evidence which shows that appellant has a ratable impairment of his left upper or lower extremity and, therefore, he did not meet his burden of proof to establish that he is entitled to a schedule award. Therefore, the Office properly denied his claim for a schedule award.

The decision of the Office of Workers' Compensation Programs dated April 15, 1997 is affirmed.

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

⁶ *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁷ A.M.A., *Guides* 41-45.

⁸ He indicated that appellant did not exhibit any tenderness or atrophy of the left shoulder.

⁹ A.M.A., *Guides* 77-78, 90-92.

¹⁰ He indicated that appellant did not exhibit pain upon full flexion of his left knee.

¹¹ On December 20, 1996 an Office medical adviser reviewed Dr. Grant's report and indicated he agreed with Dr. Grant that appellant did not have a ratable permanent impairment.

Dated, Washington, D.C.
March 29, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member