

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ARTURO F. BENAVIDEZ and U.S. POSTAL SERVICE,  
POST OFFICE, Phoenix, AZ

*Docket No. 98-42; Submitted on the Record;  
Issued November 1, 1999*

---

DECISION and ORDER

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

The issue is whether appellant has more than a seven percent permanent impairment to the right arm.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a rotator cuff tear and a right shoulder sprain causally related to factors of his federal employment. By decision dated June 23, 1997, the Office issued a schedule award for a seven percent permanent impairment to the right arm.

The Board has reviewed the record and finds that appellant has not established more than a seven percent permanent impairment to the right arm.

Section 8107 of the Federal Employees' Compensation 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.<sup>1</sup> 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 has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>2</sup>

In this case, an attending physician, Dr. D. Michael Maddox, an osteopath, indicated in a form report dated November 5, 1996 that appellant had a seven percent permanent impairment to the right arm. By letter dated November 25, 1996, the Office requested that Dr. Maddox provide

---

<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

an additional report with respect to any permanent impairment to the right arm. In a form report dated December 16, 1996, Dr. Maddox provided range of motion results for the right shoulder, noted that appellant had occasional aching in the shoulder with weakness or atrophy in the external rotators and opined that appellant had a seven percent permanent impairment. He indicated that the date of maximum medical improvement was October 22, 1996.

In a memorandum dated May 29, 1997, an Office medical adviser reviewed the December 16, 1996 report and concurred that under the A.M.A., *Guides* there was a seven percent permanent impairment. With respect to range of motion, the medical adviser indicated that appellant had a three percent impairment. Under the A.M.A., *Guides*, shoulder extension of 40 degrees results in a 1 percent impairment,<sup>3</sup> abduction of 160 degrees is a 1 percent impairment,<sup>4</sup> and adduction of 30 degrees is an additional 1 percent.<sup>5</sup> The remaining ranges of motion reported by Dr. Maddox were normal and would not result in any additional impairment under the A.M.A., *Guides*. Therefore the Office medical adviser properly concluded that appellant had a three percent impairment for loss of range of motion. The medical adviser then properly applied the A.M.A., *Guides* in determining an impairment for weakness; identifying the suprascapular nerve, which provides a maximum impairment of 16 percent for motor deficit,<sup>6</sup> and grading the impairment at 25 percent of the maximum, for a 4 percent impairment.<sup>7</sup>

The medical adviser therefore found a seven percent impairment under the A.M.A., *Guides*, which is in accord with Dr. Maddox's findings and with his opinion as the degree of permanent impairment. No impairment for sensory deficit or pain was found, and the brief statement from Dr. Maddox that appellant had occasional aching is not sufficient to establish an impairment based on pain.<sup>8</sup> The Board accordingly finds that the Office properly found that appellant was entitled to a schedule award for a seven percent permanent impairment to the right

---

<sup>3</sup> A.M.A., *Guides* (4th ed.), 43, Figure 38.

<sup>4</sup> A.M.A., *Guides*, (4th ed.) 45, Figure 41.

<sup>5</sup> *Id.*

<sup>6</sup> A.M.A., *Guides*, (4th ed.) 54, Table 15.

<sup>7</sup> A.M.A., *Guides*, (4th ed.) 49, Table 12.

<sup>8</sup> According to the A.M.A., *Guides*, only persistent pain or discomfort that leads to permanent loss of function should be evaluated as a permanent impairment. *Id.* at 48.

arm. There is no probative evidence establishing entitlement to more than a seven percent permanent impairment in this case.<sup>9</sup>

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). The maximum number of weeks for the arm is 312, and therefore appellant is entitled to 7 percent of 312, or 21.84 weeks. The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.<sup>10</sup> In this case, the award commenced on October 22, 1996, the date of maximum medical improvement provided by the attending physician.

The decision of the Office of Workers' Compensation Programs dated June 23, 1997 is affirmed.

Dated, Washington, D.C.  
November 1, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

---

<sup>9</sup> The Board notes that the record contains a form report dated December 23, 1996 from a Dr. S.B. Ruggeri, who, however, reported a normal range of motion and found only a five percent impairment, without explaining how the degree of impairment was determined. This report is of diminished probative value and clearly would not provide the basis for a greater than seven percent permanent impairment.

<sup>10</sup> *Albert Valverde*, 36 ECAB 233, 237 (1984).