

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL J. TORQUEMADA and DEPARTMENT OF COMMERCE,
NATIONAL MARINE FISHERIES SERVICE, Santa Rosa, CA

*Docket No. 98-384; Submitted on the Record;
Issued October 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a one percent impairment of the right upper extremity, for which he received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no greater than a one percent impairment of the right upper extremity.

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 under the law for 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*³ (hereinafter A.M.A., *Guides*) have been adopted by the Office of Workers' Compensation Programs and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

On January 8, 1993 appellant, then a 33-year-old special agent, sustained an employment-related right shoulder sprain with impingement syndrome. By decision dated September 11, 1997, the Office granted him a schedule award for a one percent permanent

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

impairment of the right upper extremity for a total of 3.12 weeks of compensation, to run from February 18 to March 11, 1997. The Office based its decision on the July 25, 1997 opinion of the Office medical adviser who applied the standards of the A.M.A., *Guides* to the February 18, 1997 findings, of Dr. Charles W. Moulton, an attending Board-certified orthopedic surgeon. The instant appeal follows.

In this case, the Office medical adviser correctly applied the relevant standards of the A.M.A., *Guides* to Dr. Moulton's findings in order to determine that appellant had a 1 percent permanent impairment of his right upper extremity. The Office medical adviser found that maximum medical improvement was reached on February 18, 1997 the date Dr. Moulton discharged appellant from his care. He then properly utilized Table 11, determining that appellant's impairment due to pain was rated Grade 2 or 25 percent⁵ and utilized Table 15, determining that the maximum impairment based on the axillary nerve was 5 percent. Dr. Moulton then properly multiplied the degree of sensory deficit found in Table 11 with the appropriate percentage in Table 15 to reach a one percent impairment.⁶

It is appellant's burden to submit sufficient evidence to establish his claim.⁷ In his February 18, 1997 report, Dr. Moulton noted that, while appellant had pain in the shoulder with overhead activity, there were no objective factors of disability and discharged appellant from his care. He advised that appellant could return to full duty without restriction. There is, therefore, no medical evidence establishing that appellant has greater than a 1 percent impairment, for which he received a schedule award.

⁵ A.M.A., *Guides* at 48.

⁶ A.M.A., *Guides* at 54.

⁷ See *Annette M. Dent*, 44 ECAB 403 (1993).

The decision of the Office of Workers' Compensation Programs dated September 11, 1997 is hereby affirmed.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member