

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRY V. TELLS and DEPARTMENT OF THE NAVY,
PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, HI

*Docket No. 98-139; Submitted on the Record;
Issued September 7, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than an eight percent permanent impairment to the right arm and a five percent permanent impairment to the left arm.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained bilateral carpal tunnel syndrome and de Quervains disease of the right wrist. By decision dated December 26, 1996, the Office issued a schedule award for an eight percent impairment to the right arm and a five percent impairment to the left arm. By decision dated September 18, 1997, the Office determined that appellant's request for reconsideration was insufficient to warrant reopening the claim for merit review.

The Board has reviewed the record and finds that appellant has not established more than an eight percent permanent impairment to the right arm and five percent to the left 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.¹ 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's, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as the uniform standard applicable to all claimants.²

¹ 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).

² A. George Lampo, 45 ECAB 441 (1994).

In the present case, the Office referred appellant for an examination by Dr. Deborah Agles, an orthopedic surgeon.³ In a report dated October 24, 1996, he provided a history and results on examination. Dr. Agles provided range of motion for the right wrist: 50 degrees of flexion, 55 degrees of extension, 20 degrees radial and 15 degrees ulnar deviation. For the left wrist, the corresponding ranges were 54, 55, 20 and 26 degrees. Under the A.M.A., *Guides*, the impairment due to loss of range of motion in the wrist is calculated using Figures 26 and 29.⁴ Fifty degrees of flexion extension results in a 2 percent impairment to the arm, 55 degrees of extension is a 1 percent impairment and 15 degrees of ulnar deviation is a 3 percent impairment, for a total of 6 percent. In a memorandum dated December 16, 1996, an Office medical adviser reviewed the report and concurred with Dr. Agles that there was a six percent permanent impairment to the right wrist for loss of range of motion. For the left wrist, both Dr. Agles and the Office medical adviser correctly indicated that there was a four percent impairment for loss of range of motion.⁵

In addition, Dr. Agles reported 50 degrees of metacarpophalangeal joint flexion in the right thumb, which results in a one percent thumb impairment under Figure 13⁶ and 3 centimeters lack of adduction results in a 3 percent thumb impairment, for a total of 4 percent impairment to the right thumb. A four percent thumb impairment is equivalent to a two percent arm impairment.⁷

Accordingly, the permanent impairment based on loss of range of motion equals eight percent for the right arm and four percent for the left arm. There is no other probative evidence establishing an additional impairment. Dr. Agles did not discuss an additional impairment for sensory or motor deficit and the Office medical adviser specifically noted there was no impairment for weakness or sensory deficit based on the evidence. Appellant did not submit any additional medical evidence regarding a permanent impairment under the A.M.A., *Guides* causally related to his federal employment. Based on the evidence of record, there is no indication that appellant is entitled to more than the eight percent impairment to the right arm and five percent impairment to the left arm already received.

³ The office had requested an attending physician, Dr. Theresa Danao, provide a report with respect to permanent impairment, but she declined to perform a rating examination.

⁴ A.M.A., *Guides*, 36, Figure 26, and 38, Figure 29.

⁵ The Office medical adviser subsequently concluded that there was a total of five percent for the left arm, without explanation.

⁶ A.M.A., *Guides*, 27, Figure 13.

⁷ *Id.*, 18, Table 1, and 19, Table 2.

The decisions of the Office of Workers' Compensation Programs dated September 18, 1997 and December 26, 1996 are affirmed.

Dated, Washington, D.C.
September 7, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member