

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDMUNDO G. PEREZ and U.S. POSTAL SERVICE,  
POST OFFICE, Long Beach, CA

*Docket No. 98-548; Submitted on the Record;  
Issued September 23, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant has more than a ten percent permanent impairment of the right upper extremity.

On September 7, 1995, appellant, then a 29-year-old letter carrier, filed a claim for a schedule award alleging that he developed an employment-related permanent impairment of his right upper extremity.<sup>1</sup> In a decision dated October 7, 1997, following a period of medical and factual development, the Office of Workers' Compensations Programs awarded appellant a schedule award for a ten percent permanent impairment of his right upper extremity.

The Board has duly reviewed the record on appeal and finds that the evidence supports no more than a ten percent permanent impairment.

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.304 of the implementing federal regulations<sup>3</sup> authorize the payment of schedule awards for the loss or permanent impairment of specified members, functions or organs of the body. Neither the Act nor the regulations specify, however, how the percentage of impairment 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

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<sup>1</sup> Appellant has several accepted medical conditions. On February 24, 1994 in claim number 13-1035508, the Office accepted that appellant sustained an employment related right wrist strain. On April 17, 1995 in claim number 13-1055143, the Office accepted that appellant sustained an employment-related right-sided cervical sprain. In the instant claim, number 13-1069983, the Office accepted on April 27, 1995 that appellant sustained an employment-related right shoulder impingement and right shoulder strain.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

The Office applied these standards to the clinical findings of Dr. Daniel A. Capen, a Board-certified orthopedic surgeon, to whom appellant had been referred by the Office for a comprehensive examination, following the filing of appellant's claim for a schedule award for his right shoulder condition. In his report dated January 8, 1997, Dr. Capen noted the history of appellant's injuries and fully reviewed the medical evidence of record. Dr. Capen noted that appellant complained of continuous aching to sharp pain in his right shoulder radiating up the right side of his neck and down into his hand and frequent swelling in the right upper extremity, extending from the shoulder to the hand. Appellant further reported pain radiating to the right upper back region and numbing, tingling, stabbing pains, electrical shock sensations in the shoulder and neck region. Appellant added that he had stiffness and cramping in his neck and felt pain whenever he turns his head from side to side or tilts his head up and down. Appellant further reported occasional popping in the shoulder and increased pain upon lifting, reaching, carrying and lifting his right arm above shoulder level. Appellant also related pain and numbness in the right wrist and hand region as well as weakness in the hand which has caused him to drop objects. Appellant finally stated that his pain was aggravated by prolonged sitting, increasing after about 30 minutes. Following his physical examination, Dr. Capen noted that appellant had normal range of motion values for the left shoulder, but noted that examination of appellant's right shoulder revealed the following range of motion values: abduction to 150 degrees, extension to 20 degrees, external rotation to 70 degrees and internal rotation to 30 degrees. Dr. Capen further noted that appellant had a 25 percent loss of cervical mobility.

Applying the A.M.A., *Guides* (fourth edition 1995), an Office medical consultant determined from Dr. Capen's findings that appellant had a ten percent impairment of the right upper extremity due to pain and loss of range of motion. Based on Dr. Capen's description of appellant's pain, the Office medical consultant graded the severity of appellant's pain as the "maximal" Grade 3 under Table 11, page 48, or as "decreased sensibility with or without abnormal sensation or pain, which interferes with activity." Such a grade represents a 25 to 60 percent sensory deficit of the involved nerve. The Office medical consultant chose the greatest percentage deficit allowed by such a grade, or 60 percent. Following the procedure set forth at Table 11, page 48, he multiplied 60 percent by the maximum impairment value of the involved axillary nerve, or 5 percent according to Table 15, page 54, thereby arriving at a 3 percent impairment of the right upper extremity due to sensory deficit or pain. Based on Dr. Capen's description of appellant's range of motion, the Office medical consultant graded the severity of appellant's impairment using Figure 41 and Figure 44 on pages 44 and 45 of the A.M.A., *Guides*, respectively. He noted that appellant's abduction of 150 degrees equated to a 1 percent impairment and that extension of 20 degrees was the equivalent of a 2 percent impairment. He rated appellant's external rotation of 70 as equivalent to a 4 percent impairment and noted that internal rotation of 30 degrees would be considered a 0 percent impairment. The Office medical consultant further noted that there was no atrophy or weakness and that appellant's slightly diminished grip strength on the right would not be due to weakness involving the shoulder girdle musculature. Utilizing the Combined Values Chart, on page 322 of the A.M.A., *Guides*, he

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<sup>4</sup> See, e.g., *Leisa D. Vassar*, 40 ECAB 1287 (1989).

determined that appellant's three percent impairment for pain combined with his seven percent total impairment for loss of range of motion, equated to a ten percent permanent impairment of the right upper extremity.

The Board finds that the Office followed standardized procedures and that the medical evidence supports no more than a ten percent permanent impairment of the right upper extremity, for which appellant received a schedule award on October 7, 1997. Appellant argues on appeal that pursuant to Dr. Capen's assessment, he is entitled to additional compensation for a 25 percent loss of mobility of his cervical spine. A schedule award is not payable for a member, function, or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the implementing regulations provide for the payment of a schedule award for the permanent loss of use of the cervical spine, no claimant is entitled to such an award.<sup>5</sup> In the present case, while the medical evidence does support that appellant may have as much as a 25 percent impairment of the cervical spine, as impairments of the cervical spine are not compensable under the provisions of the Act, any impairment rating based upon cervical spine losses of range of motion is not compensable under the Act and appellant is not entitled to a schedule award on this basis.

The October 7, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
September 23, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>5</sup> See *George E. Williams*, 44 ECAB 530 (1993); *James E. Mills*, 43 ECAB 215 (1991); *Joseph D. Lee*, 42 ECAB 172 (1990).