

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT L. BISHOP and NATIONAL AERONAUTICS & SPACE  
ADMINISTRATION, AMES RESEARCH CENTER, Moffet Field, CA

*Docket No. 98-1085; Submitted on the Record;  
Issued September 2, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has more than a 64 percent impairment of the right upper extremity for which he received a schedule award.

On September 9, 1994 appellant, then a 56-year-old mechanic, filed a claim for a traumatic injury to his right shoulder. On November 1, 1994 appellant filed a claim for an additional injury to his right arm and hand. The Office of Workers' Compensation Programs accepted appellant's claims for a right biceps tear with associated neuropathy. Appellant worked in a limited-duty capacity following his employment injury until he retired on March 31, 1995.

The record indicates that in August or September 1995 appellant sustained a cerebral vascular accident causing, *inter alia*, right-sided weakness.

On October 9, 1995 appellant filed a claim for a schedule award.

By letter dated October 30, 1995, the Office requested that Dr. Leslie Oshita, an attending Board-certified internist, provide an impairment rating of appellant's right upper extremity in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993).

In a report dated December 21, 1995, Dr. Oshita related that appellant had reached maximum medical improvement on August 18, 1995 and diagnosed "[r]ight radial nerve palsy, [r]ight biceps tendon rupture, [and] [s]tatus-post left hemispheric cerebrovascular accident, September 1995, with subsequent exacerbation of right upper extremity paresis." Dr. Oshita evaluated appellant's right upper extremity impairment based on measurements obtained prior to his cerebrovascular accident.

Based on Dr. Oshita's opinion, as reviewed by an Office medical adviser, in a decision dated February 2, 1996, the Office issued appellant a schedule award for a 23 percent permanent

impairment of his right upper extremity. The period of the award ran for 71.76 weeks from May 15, 1995 to September 28, 1996.

By letter dated February 15, 1996, appellant requested a hearing before an Office hearing representative. Appellant submitted a report dated November 8, 1996 from Dr. Milton C. David, a Board-certified orthopedic surgeon, who indicated that he had evaluated appellant's impairment according to the A.M.A., *Guides*. In a letter dated December 17, 1996, appellant, through his representative, requested a review of the written record.

By decision dated March 3, 1997, the hearing representative set aside the Office's February 2, 1996 decision after finding that the case required further development. The hearing representative noted that Dr. Oshita rated appellant's right upper extremity impairment based on findings prior to his August/September 1995 cerebrovascular accident, which she found increased the degree of impairment, while Dr. David opined that all of appellant's right upper extremity impairment was due to his employment injury.

The Office referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion evaluation. Based on her report, as reviewed by the Office medical adviser, by decision dated September 8, 1997, the Office issued appellant a schedule award for an additional 41 percent impairment of the right upper extremity. The period of the award ran for 127.92 weeks from September 29, 1996 to March 13, 1999.

The Board finds that appellant has a 68 percent impairment of the right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act,<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> 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 A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.<sup>3</sup>

In a report dated July 7, 1997, Dr. Swartz listed the range of motion findings for appellant's right shoulder as follows: 160 degrees flexion; 130 degrees abduction; 0 degrees adduction; 10 degrees extension; 15 degrees external rotation; 5 degrees internal rotation; and 20 degrees backward elevation. She further found that appellant had 90 degrees right forearm pronation and 0 degrees supination and that "[t]he range of motion of the right elbow reveals that he lacks the last 40 degrees of full extension, with further flexion to 115 degrees." Dr. Swartz listed the range of motion of appellant's right wrist as follows: 0 degrees dorsiflexion; 40 degrees palmar flexion; 10 degrees radial deviation; and 10 degrees ulnar deviation. She further

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> *James J. Hjort*, 45 ECAB 595 (1994).

found “limited motion of the digits of the right hand compared to the left hand. Thumb abduction is 30 degrees on the right and 50 degrees on the left. Thumb adduction is equal on the right and the left.” Dr. Swartz found that appellant had zero degrees of extension for all the joints of all the fingers. Dr. Swartz listed the range of motion of the metacarpophalangeal (MCP) joint of the right thumb as 30 degrees and the interphalangeal (IP) joint as 40 degrees. For the index finger, she found the following degrees of flexion: 80 degrees of the MCP joint; 90 degrees of the proximal interphalangeal (PIP) joint; and 10 degrees of the distal interphalangeal (DIP) joint. For flexion of the middle finger, Dr. Swartz found as follows: 90 degrees of the MCP joint; 95 degrees of the PIP joint; and no motion at the DIP joint due to ankylosis. For range of motion of the ring finger, she listed the following measurements of flexion: 90 degrees of the MCP joint; 100 degrees of the PIP joint; and 15 degrees at the DIP joint and for flexion of the little finger, she found as follows: 100 degrees of the MCP joint; 100 degrees of the PIP joint; and 20 degrees at the DIP joint. Dr. Swartz found “overall decreased strength in the right upper extremity, including the muscles of the shoulder girdle, elbow, forearm, wrist and hand.” She listed grip strength findings, circumferential measurements and noted that sensory testing revealed right arm hyperesthesias. Dr. Swartz attributed all but approximately 10 percent of appellant’s right upper extremity impairment to his employment injury based on appellant’s description of his symptoms prior to his stroke. In an accompanying form report, Dr. Swartz noted that appellant had changes in the radial nerve and weakness of his right upper extremity.

In a report dated August 21, 1997, an Office medical adviser reviewed Dr. Swartz’s July 7, 1997 report and applied the appropriate tables and sections of the A.M.A., *Guides* to her findings. He found that appellant had the maximum 5 percent sensory impairment of the radial nerve due to hypesthesias,<sup>4</sup> which when multiplied by the 60 percent for a Grade III sensory impairment yielded a 3 percent impairment of the upper extremity due to sensory deficit.<sup>5</sup> The Office medical adviser determined that, for appellant’s right shoulder, 160 degrees flexion constituted a 1 percent impairment;<sup>6</sup> 130 degrees abduction constituted a 2 percent impairment;<sup>7</sup> 0 degrees adduction constituted a 2 percent impairment;<sup>8</sup> 10 degrees extension constituted a 2 percent impairment;<sup>9</sup> 15 degrees external rotation constituted a 1.5 percent impairment;<sup>10</sup> and 5 degrees internal rotation constituted a 5 percent impairment<sup>11</sup> which when added together totaled

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<sup>4</sup> A.M.A., *Guides* at 54, Table 15.

<sup>5</sup> *Id.* at 48, Table 11.

<sup>6</sup> *Id.* at 43, Figure 38.

<sup>7</sup> *Id.* at 44, Figure 41.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 43, Figure 38.

<sup>10</sup> *Id.* at 45, Figure 44.

<sup>11</sup> *Id.*

a 14 percent impairment due to decreased range of motion of the shoulder.<sup>12</sup> The Office medical adviser further determined:

“There was loss of right elbow motion with 40 degrees/0 through 115/125, which would be assigned 4 [percent] for loss of extension and 3 [percent] for loss of flexion, or a 7 [percent] impairment for loss of elbow motion.<sup>13</sup>

“Wrist motion was decreased, with dorsiflexion 0/70, equivalent to an 11 [percent] impairment;<sup>14</sup> [p]almar flexion 40/50, equivalent to a 3 [percent] impairment;<sup>15</sup> radial deviation 10/15, equivalent to a 2 [percent] impairment;<sup>16</sup> and ulnar deviation 10/20, equivalent to a 4 [percent] impairment,<sup>17</sup> for a total of 20 [percent] for loss of wrist motion.”<sup>18</sup>

The Office medical adviser further stated:

“There was loss of motion of the thumb with abduction 30/50, equivalent to a three [percent] impairment,<sup>19</sup> adduction full for a 0 [percent] impairment,<sup>20</sup> [MCP] joint motion 30, equivalent to a 3 [percent] impairment<sup>21</sup> and [IP] joint motion 40/50, equivalent to a 3 [percent] impairment,<sup>22</sup> for a 9 [percent] impairment of the thumb,<sup>23</sup> equivalent to a 4 [percent] impairment of the hand.”<sup>24</sup>

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<sup>12</sup> *Id.* at 45.

<sup>13</sup> *Id.* at 40, Figure 32.

<sup>14</sup> *Id.* at 36, Figure 26.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at Figure 29.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 38.

<sup>19</sup> *Id.* at 28, Table 6.

<sup>20</sup> *Id.* at 28, Table 5.

<sup>21</sup> *Id.* at 27, Figure 13.

<sup>22</sup> *Id.* at 26, Figure 10.

<sup>23</sup> *Id.* at 26.

<sup>24</sup> *Id.* at 18, Table 1.

For the index finger, he determined that 90 degrees flexion of the MCP joint constituted a 6 percent impairment,<sup>25</sup> 90 degrees flexion of the PIP joint constituted a 6 percent impairment,<sup>26</sup> and 10 degrees flexion of the DIP joint constituted a 31 percent impairment,<sup>27</sup> or a 39 percent combined impairment of the finger,<sup>28</sup> or 8 percent of the hand.<sup>29</sup> He further found that appellant had no rating of the middle finger due to amputation. For the ring finger, the Office medical adviser found that 90 degrees flexion of the MCP joint constituted a 6 percent impairment,<sup>30</sup> 100 degrees flexion of the PIP joint constituted no impairment,<sup>31</sup> and 15 degrees flexion of the DIP joint constituted a 29 percent impairment,<sup>32</sup> or a 33 percent combined impairment of the finger,<sup>33</sup> or 3 percent of the hand.<sup>34</sup> Regarding the little finger, the Office medical adviser found that appellant had full range of motion of the MCP and PIP for no impairment,<sup>35</sup> and 20 degrees range of motion of the DIP joint for a 26 percent impairment of the finger,<sup>36</sup> or 3 percent of the hand.<sup>37</sup> He added the impairments due to loss of range of motion of the fingers and thumbs to find an 18 percent impairment of the hand<sup>38</sup> or 16 percent impairment of the upper extremity.<sup>39</sup> He further stated:

“The records indicate marked decreased grip strength on the right, compared to the left, with more than 80 [percent] loss, which according to [T]able 34, [C]hapter three, page 65, would be equivalent to a 30 [percent] upper extremity impairment.

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<sup>25</sup> *Id.* at 34, Figure 23. The Board notes that 90 degrees flexion of the MCP joint constitutes no impairment; however, the error is harmless as it does not decrease appellant’s schedule award.

<sup>26</sup> *Id.* at 33, Figure 21.

<sup>27</sup> *Id.* at 32, Figure 19.

<sup>28</sup> *Id.* at 35.

<sup>29</sup> *Id.* at 18, Table 1.

<sup>30</sup> *Id.* at 34, Figure 23.

<sup>31</sup> *Id.* at 33, Figure 21.

<sup>32</sup> *Id.* at 32, Figure 19.

<sup>33</sup> *Id.* at 35.

<sup>34</sup> *Id.* at 18, Table 1.

<sup>35</sup> *Id.* at 33-34, Figures 21 and 23.

<sup>36</sup> *Id.* at 32, Figure 19.

<sup>37</sup> *Id.* at 18, Table 1.

<sup>38</sup> *Id.* at 35.

<sup>39</sup> *Id.* at 19, Table 2.

“Utilizing the Combined Values Chart, with 30 [percent] for loss of strength, combined with the 20 [percent] or loss of wrist motion, combined with the 16 [percent] for loss of thumb and finger motion, combined with the 14 [percent] for loss of shoulder motion, combined with the 7 [percent] for loss of elbow motion, combined with the 3 [percent] for altered sensation, would be equivalent to a 64 [percent] impairment of the right upper extremity or arm.”<sup>40</sup>

He concluded that appellant had a 58 percent impairment of the upper extremity after subtracting 10 percent from the impairment value due to the stroke. In an Office internal memorandum dated September 4, 1997, the Office concluded that as it had no reliable rating of appellant’s impairment prior to his stroke, it would award him the full 64 percent impairment.

The Office medical adviser applied the A.M.A., *Guides* to Dr. Swartz’s findings and properly utilized the A.M.A., *Guides*, in reaching his conclusions. However, the Board notes that the Office medical adviser did not provide an impairment rating for appellant’s middle finger as he incorrectly believed that the finger was amputated. Regarding the middle finger, Dr. Swartz found that appellant had 90 degrees flexion of the MCP joint, which constitutes no impairment,<sup>41</sup> 95 degrees flexion of the PIP joint, which constitutes a 3 percent impairment,<sup>42</sup> no motion due to ankylosis of the DIP joint which constitutes a 36 percent impairment, and 0 degrees extension of the MCP joint, which constitutes a 5 percent impairment.<sup>43</sup> Appellant’s total impairment of the middle finger, after combining the findings using the Combined Values Chart, equals a 41 percent impairment of the finger or eight percent impairment of the hand.<sup>44</sup> The Office medical adviser further overlooked Dr. Swartz’s finding that appellant had zero degrees extension at the MCP joint of all fingers, which constitutes a five percent impairment.<sup>45</sup> For the index, middle and little finger, the addition of the 5 percent impairment from loss of extension does not change the Office medical adviser’s finding regarding the extent of the impairment of the hand. The addition of the five percent impairment of the MCP joint of the ring finger for loss of extension, after combining the impairment findings and converting to an impairment of the hand, changes the total impairment of the hand from three percent to four percent. When the hand impairments due to loss of motion of the fingers are added together, the total impairment of the hand is 23 percent.

Additionally, the Office medical adviser did not consider Dr. Swartz’s finding that appellant had 90 degrees pronation of the right forearm, which constitutes no impairment,<sup>46</sup> and

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<sup>40</sup> *Id.* at 322.

<sup>41</sup> *Id.* at 34, Figure 23.

<sup>42</sup> *Id.* at 33, Figure 21.

<sup>43</sup> *Id.* at 34, Figures 23.

<sup>44</sup> *Id.* at 18, Table 1.

<sup>45</sup> *Id.* at 34, Figure 23.

<sup>46</sup> *Id.* at 41, Figure 35.

0 degrees supination, which constitutes a 3 percent impairment. When added to the 7 percent elbow impairment previously found, it yields a 10 percent total elbow impairment.<sup>47</sup> Combining the impairment ratings, as modified, of 30 percent for strength, 20 for the wrist, 23 percent for the hand, 14 percent for the shoulder, 10 percent for the elbow and 3 percent for loss of sensation, yields a total impairment of the right upper extremity of 68 percent. The Board, therefore, finds that appellant has a 68 percent permanent impairment of the right arm.

The decision of the Office of Workers' Compensation Programs dated September 8, 1997 is hereby affirmed as modified.

Dated, Washington, D.C.  
September 2, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>47</sup> *Id.* at 41.