

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH POPLUHAR and DEPARTMENT OF THE NAVY,
PORTSMOUTH NAVAL SHIPYARD, Portsmouth, NH

*Docket No. 98-1158; Submitted on the Record;
Issued September 17, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than an 18 percent permanent impairment to his left upper extremity.

The Board has duly reviewed the record on appeal and finds that the evidence supports no more than an 18 percent permanent impairment.

Section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations² 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 of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the standard for determining the percentage of impairment and the Board has concurred in such adoption.³

The Office applied these standards to the clinical findings of Dr. Frank A. Graf, a Board-certified orthopedic surgeon, who, on August 1, 1996 Dr. Graf reported that appellant, whose claim was accepted for a left shoulder contusion and arthroscopy of the left shoulder, had left rotator cuff tendinitis with adhesive capsulitis, status-post open surgery; cervical injury with chronic cervical pain and left brachial plexus injury and peripheral spinal nerve root injury, all secondary to appellant being struck by a zinc bar being dropped from an overhead position. Dr. Graf opined that appellant was substantially disabled for employment by reason of severe

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ See, e.g., *Leisa D. Vassar*, 40 ECAB 1287 (1989).

musculoskeletal restrictions and ongoing peripheral nerve root dysfunction affecting left arm functions. In a September 25, 1996 letter, an Office medical adviser stated that, in order to calculate the percentage of impairment of the left upper extremity, figures for left shoulder motion from appellant's orthopedic surgeon must be obtained. In a report of January 27, 1997, Dr. Graf provided figures for left shoulder motion as determined by the range of motion analysis performed on January 14, 1997. Dr. Graf reported flexion to 85 degrees, extension to 35 degrees, abduction to 88 degrees, adduction to 32 degrees, external rotation to 58 degrees and internal rotation to 57 degrees with neck pain with resistance noted on flexion, extension and abduction and the ability to resist limited by pain on external rotation.

Applying the A.M.A., *Guides* (4th ed. 1995), an Office medical adviser determined from Dr. Graf's findings that under Figure 38, page 43, flexion to 85 degrees equates to a 7 percent impairment, extension to 35 degrees equates to a 1 percent impairment. Under Figure 41, page 44, abduction to 88 degrees equates to a 4 percent impairment and an adduction of 32 degrees equates to a 1 percent impairment. Under Figure 44, page 45, an external rotation to 58 degrees equates to a 0 percent impairment and internal rotation to 57 degrees equates to a 2 percent impairment. This totals a 15 percent impairment of the left upper extremity due to loss of range of motion. Utilizing Table 15, page 54, the maximum upper extremity impairment due to shoulder pain is 5 percent. Utilizing Table 11, page 3, the Office medical adviser graded appellant's pain a level 3, for pain which may interfere with activity, and noted that a 60 percent sensory deficit was allowed. Following the procedure set forth at Table 11, he multiplied the 60 percent sensory deficit by the 5 percent maximum impairment value, to arrive at a 3 percent impairment value of the left upper extremity due to pain. Utilizing the Combined Values Chart, page 322, 15 percent impairment due to loss of motion combined with 3 percent due to pain equates to an 18 percent impairment of the left upper extremity.

The Board finds that the Office followed standardized procedures and that the medical evidence supports no more than an 18 percent permanent impairment of the left upper extremity, for which appellant received a schedule award on April 8, 1997. Appellant argues on appeal that his work injury has caused chronic shoulder and neck pain which prevents his pursuit of suitable employment. Although the impairment is permanent and appellant may unfortunately continue to experience chronic pain, the Act limits compensation for permanent impairment to a specified number of weeks of compensation. The Act thus limits compensation for the complete loss of an upper extremity to 312 weeks of compensation.⁴ An 18 percent permanent impairment of an upper extremity is compensated proportionately with 56.16 weeks of compensation, which the Office awarded.⁵

⁴ 5 U.S.C. § 8107(c)(1).

⁵ *Id.* at § 8107(c)(19).

The April 8, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
September 17, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member