

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE L. JOHNSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Grand Island, NE

*Docket No. 99-295; Submitted on the Record;
Issued April 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has greater than an 11 percent permanent loss of use of his right arm.

The Office of Workers' Compensation Programs accepted that appellant's September 24, 1996 employment injury resulted in a right shoulder rotator cuff tear. With the Office's authorization, this tear was repaired on January 3, 1997 by Dr. Matthew C. Reckmeyer, a Board-certified orthopedic surgeon. In a report dated September 23, 1997, Dr. Reckmeyer reported that appellant had mild deltoid atrophy, flexion to 150 to 160 degrees, external rotation of 30 to 40 degrees, internal rotation to the mid-lumbar region, some weakness with resisted rotation and long-term residual discomfort with overuse. Dr. Reckmeyer concluded: "Based on the nature of his injury his treatment, his recovery, my experience and the American Medical Association, *Guides to the Evaluation of Permanent Impairment* I believe he sustained a 6 percent ... permanent impairment to the right upper extremity. This gives consideration for motion, weakness and discomfort."

On December 10, 1997 the Office referred appellant to Dr. Reckmeyer for an evaluation of the permanent impairment of appellant's right arm and requested that he complete a form describing all the ranges of motion of appellant's right shoulder and estimating additional impairment of function for weakness, pain, atrophy and loss of sensation. In a report dated December 23, 1997, Dr. Reckmeyer stated that appellant had a six percent permanent impairment of his right arm, based on loss of mobility and weakness.

On June 8, 1998 the Office referred appellant, the case record and a statement of accepted facts to Dr. Kip A. Burkman, a Board-certified physiatrist, for an evaluation of the permanent impairment of his right arm. In a report dated June 22, 1998, Dr. Burkman noted appellant's complaints of decreased strength and of pain and soreness increased by driving, lifting over shoulder level and carrying. After describing his findings on examination of appellant's right shoulder, Dr. Burkman concluded:

“Right shoulder flexion of 128 degrees is 3 percent upper extremity impairment and extension of 48 degrees is 0 percent impairment according to [p]age 43, Figure 38 of the fourth edition of the A.M.A., *Guides*. Right shoulder abduction is 139 degrees, which is 2 percent upper extremity impairment and adduction of 42 degrees is 0 percent impairment according to page 44, Figure 41. The right shoulder external rotation of 72 degrees is 0 percent impairment and internal rotation of 70 degrees is 1 percent upper extremity impairment according to page 45, Figure 44. This gives a total of six percent right upper extremity impairment due to loss of range of motion. The pain/sensory calculation is based at 5 percent maximum (per page 54, Table 15, axillary nerve) times the decrement of 0.2 (per page 48, Table 11), which equals 1 percent upper extremity impairment. Strength loss is rated at 35 percent maximum (per page 54, Table 15, axillary nerve) times the decrement of 0.1 (per page 49, Table 12), which equals a 4 percent upper extremity impairment. Section 3.1M does not apply.

“Using the combining tables in the fourth edition of the A.M.A., *Guides* this patient would have an 11 percent right upper extremity impairment.”

An Office medical adviser reviewed Dr. Burkman’s report on July 27, 1998 and stated that it was correct using the fourth edition of the A.M.A., *Guides*.

On September 22, 1998 the Office issued appellant a schedule award for an 11 percent permanent loss of use of his right arm.

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

The Board finds that appellant has no greater than an 11 percent permanent loss of use of his right arm.

As confirmed by an Office medical adviser, the June 22, 1998 report from Dr. Burkman properly applied the A.M.A., *Guides* to Dr. Burkman’s findings on examination. Dr. Burkman properly rated appellant’s permanent impairment with regard to motion, strength and pain. There is no evidence that appellant has greater than an 11 percent permanent loss of use of his

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

right arm. Appellant's attending physician, Dr. Reckmeyer, concluded that appellant had a six percent permanent impairment of his right arm.

The decision of the Office of Workers' Compensation Programs dated September 22, 1998 is affirmed.

Dated, Washington, D.C.
April 17, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member