

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NEAL L. MAW and DEPARTMENT OF THE AIR FORCE,
HILL AIR FORCE BASE, UT

*Docket No. 99-1767; Submitted on the Record;
Issued August 23, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has greater than a three percent permanent impairment of his right upper extremity, for which he received a schedule award.

On May 5, 1998 appellant, a heavy mobile equipment mechanic, filed a claim asserting that he sustained an injury to his right rotator cuff while in the performance of his duties. The Office of Workers' Compensation Programs accepted his claim for adhesive capsulitis of the right shoulder and torn right rotator cuff. The Office approved surgery. On December 9, 1998 appellant filed a claim for a schedule award.

On December 1, 1998 Dr. Owen M. Higgs, appellant's attending orthopedic surgeon, reported that appellant had reached maximum medical improvement. He stated that on appellant's most recent visit range of motion was 160 degrees of forward flexion, 160 degrees of abduction, 70 degrees of internal rotation and 80 degrees of external rotation. Dr. Higgs noted moderate weakness of the upper extremity. Having consulted the American Medical Association (A.M.A.) *Guides to the Evaluation of Permanent Impairment* (fourth edition), Dr. Higgs stated that appellant had a 23 percent impairment rating of the right upper extremity for loss of motion as well as loss of strength. He did not explain how he used the A.M.A., *Guides* to arrive at this estimate.

On December 29, 1998 an Office medical adviser reviewed the findings reported by Dr. Higgs and determined that appellant had a three percent permanent impairment of the right upper extremity according to Figures 38, 41 and 44 of the A.M.A., *Guides*.¹

¹ Figure 38, page 43, of the fourth edition of the A.M.A., *Guides* shows that 160 degrees of shoulder flexion represents 1 degree of impairment to the upper extremity. Figure 41, page 44, shows that 160 degrees of abduction also represents 1 degree of impairment. Figure 44, page 45, shows that 70 degrees of internal rotation represents another 1 degree of impairment, while 80 degrees of external rotation represents no additional impairment.

In a decision dated January 6, 1999, the Office issued a schedule award for a three percent permanent impairment of the right upper extremity.

The Board finds that this case is not in posture for determination. The record contains insufficient clinical information to determine the extent of appellant's permanent impairment.

Section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations³ authorize the payment of schedule awards for the loss or permanent impairment of specified members, functions or organs of the body. But neither the Act nor the regulations specify how the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

Dr. Higgs did not report appellant's range of motion on extension or adduction of the right shoulder. These measurements are required for a proper determination of permanent impairment under the A.M.A., *Guides*. Further, Dr. Higgs offered no estimate of impairment, based on the procedures set forth in the A.M.A., *Guides*, for the moderate weakness he found on examination. The record, therefore, contains insufficient clinical information to determine the extent of appellant's permanent impairment. The Board will set aside the Office's January 6, 1999 decision and remand the case for proper development of the medical evidence. After such further development as may be required, the Office shall issue an appropriate final decision on appellant's entitlement to schedule compensation.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

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

The January 6, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
August 23, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member