

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY L. INGRAM and DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, Sharpsburg, MD

*Docket No. 98-1459; Submitted on the Record;
Issued January 14, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a 10 percent permanent impairment of his right upper extremity for which he received a schedule award.

On June 5, 1995 appellant, then a 49-year-old motor vehicle operator, filed a claim for compensation alleging that on June 2, 1995 he injured his fingers while in the performance of duty. On July 13, 1995 the Office of Workers' Compensation Programs notified appellant that his claim had been accepted for contusion to the right shoulder, right elbow and right hand.

On April 12, 1996 Dr. Ralph Salvagno, appellant's treating physician and Board-certified in orthopedic surgery, stated that he had performed a debridement of rotator cuff, partial thickness tear and debridement of subacromial bursa with acromioplasty, right shoulder.

On April 29, 1996 the Office notified appellant that it had been made aware that he may have sustained a recurrence of disability based on the work-related injury of June 2, 1995. The Office advised appellant to submit medical information including a physician's statement as to the causal relationship between appellant's condition and the accepted injury.

In a medical report dated December 27, 1996, Dr. Salvagno stated that appellant "continues to have pain with limitation of motion of the right shoulder which was significantly aggravated by excessive driving."

In a medical report dated December 27, 1996 and received by the Office on January 2, 1997, Dr. Salvagno rated appellant with 120 degrees of abduction for a 3 percent permanent impairment, 120 degrees of forward elevation for a 4 percent permanent impairment and a 3 percent impairment for weakness. He stated that he had used the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) in his evaluation.

In a treatment note dated December 27, 1996 and received by the Office on February 21, 1997, Dr. Salvagno stated that he had provided the Office with an impairment rating of the shoulder, finding:

“For loss of abduction [appellant] has a deficit of 3 degrees and loss of forward elevation with an impairment of 4 degrees. It is noted that loss due to pain is factored into the range of motion measurements. He does not have any gross atrophy but does have weakness and I would ascribe another three percent due to weakness. Date of maximum medical improvement would be the date of this examination. As a result of my examination, I feel [appellant] has a 10 percent impairment of the right shoulder as a result of his injury using the A.M.A., *Guides* (4th ed. 1993). With regards to his elbow, he does have some mild discomfort laterally in the elbow and good functional use.”

On March 18, 1997 appellant, through counsel, filed a Form CA-7 with the employing establishment and requested that the employing establishment submit a completed form to the Office.

On April 8, 1997 the Office referred appellant’s medical record and a statement of accepted facts to the Office medical adviser for a determination regarding appellant’s impairment rating for his right upper extremity. On April 22, 1997 the Office medical adviser stated that appellant had a 10 percent impairment of the right upper extremity and that appellant had reached maximum medical improvement on December 27, 1996.

On April 8, 1997 the Office advised appellant that it was in receipt of his claim for a schedule award and enclosed forms for his doctor to fill out in order to determine a percentage of permanent impairment. The attached form was dated April 8, 1997 and was entitled “[w]orksheet to [c]alculate [p]ermanent [i]mpairment/functional [l]oss [u]se of [s]houlder.”

In an April 22, 1997 medical report, Dr. Salvagno stated that appellant “had recurrence of injury in his shoulder” on April 16, 1997 when he was “getting into his truck and pulled his right shoulder.” Upon examination he found tenderness in the medial supraspinatus and along the trapezius muscle and limitation of motion of the shoulder secondary to pain.

By decision dated May 7, 1997, the Office issued appellant a schedule award of 31.20 weeks of compensation for a 10 percent permanent loss of use of the right upper extremity. The period of the award was from December 27, 1996 to August 2, 1997.

On June 10, 1997 the Office received Dr. Salvagno’s responses to its April 16, 1997 letter requesting his calculations to determine appellant’s shoulder impairment. Dr. Salvagno completed the form the Office had sent and provided the following range of motion measurements for loss of use of the right shoulder: abduction and forward elevation for the affected or right shoulder of 120 degrees; internal rotation of 40 degrees; external rotation of 90 degrees; backward elevation of 40 degrees; adduction of 30 degrees; and extension of 40 degrees. He noted that appellant’s date of maximum medical improvement was December 27, 1996 and stated that he had used the A.M.A., *Guides*.

On August 28, 1997 appellant filed a request for reconsideration. In support of his request appellant submitted an August 20, 1997 medical report from Dr. Allan H. Macht, a Board-certified surgeon. In his report, Dr. Macht stated that appellant's right shoulder extension was complete, anterior elevation was measured at 30 degrees, lateral elevation to 20 degrees and internal and external rotation limited to 10 degrees in either direction. He noted that appellant had a short neck and that all attempts to move the right shoulder caused pain and discomfort. Dr. Macht noted that x-rays revealed no bony abnormalities.

On October 31, 1997 the Office referred appellant's medical record to the Office medical adviser for a determination as to whether appellant has an additional percentage of impairment to the right upper extremity. On November 5, 1997 the Office medical adviser stated that appellant had a 10 percent permanent impairment of the right upper extremity based on flexion to 120 degrees which equaled a 4 percent permanent impairment, abduction of 120 degrees which equaled 3 percent permanent impairment, and 3 percent for loss of strength. The Office medical adviser noted reference to the prior Office medical adviser's recommendation dated April 22, 1997.

In a decision dated February 26, 1998, the Office denied appellant's request for reconsideration.

The Board finds that the case is not in posture for decision.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations, schedule awards are payable for permanent impairment of specified body members, functions or organs.² 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 for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.³

In this case, the Office medical adviser did not consider Dr. Salvagno's calculations which the Office received on June 5, 1997. For example, the Office medical adviser refers only to flexion and abduction range of motion losses and loss of strength percentage. However, Dr. Salvagno's report included calculations in all range of motion functions. Therefore, inasmuch as the Office relied on incomplete data derived from a medical evaluation, the case record must be remanded to the Office for a recalculation of appellant's impairment

¹ 5 U.S.C. §§ 8101-8193, 8107.

² 20 C.F.R. § 10.304.

³ *Francis John Kilcoyne*, 38 ECAB 168, 170 (1986).

rating based on Dr. Salvagno's report which the Office received on June 5, 1997. After such review the Office shall issue a *de novo* decision regarding appellant's claim.⁴

The decision of the Office of Workers' Compensation Programs dated February 26, 1998 is set aside and the case remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
January 14, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁴ It appears that the Office medical adviser relied on Dr. Salvagno's initial findings dated December 27, 1996 in which he evaluated appellant only on flexion and abduction ranges and recommended a 10 percent permanent impairment rating.