

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT M. BETTS, SR. and DEPARTMENT OF DEFENSE,
NATIONAL IMAGERY & MAPPING AGENCY, St. Louis, MO

*Docket No. 99-941; Submitted on the Record;
Issued July 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

On April 24, 1997 appellant, then a 53-year-old electronic technician, sustained injuries to his right ankle and left hand and wrist while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for laceration of the right ankle and hyperextension of the left wrist. Additionally, the Office authorized surgery to repair appellant's injured wrist.¹

Appellant subsequently filed a claim for a schedule award with respect to the injury sustained to his left hand and wrist. In a report dated March 23, 1998, appellant's treating physician, Dr. Philip E. Higgs, a Board-certified plastic surgeon specializing in orthopedic hand surgery, indicated that appellant had a 13 percent impairment of the left upper extremity. On the advice of the Office medical adviser, appellant was referred for further evaluation.² At the request of the Office, Dr. Donald M. McPhaul, Board-certified in physical medicine and rehabilitation, examined appellant on September 1, 1998. In a report of that date, Dr. McPhaul concluded that appellant had a three percent impairment of the left upper extremity. The Office medical adviser reviewed Dr. McPhaul's report on December 9, 1998 and concurred with the doctor's findings. By decision dated December 16, 1998, the Office granted appellant a schedule award for a three percent permanent impairment of his left upper extremity. The award covered a period of 9.36 weeks.

¹ On November 6, 1997 appellant underwent a synovectomy and excision of a bone fragment from his left wrist.

² Upon reviewing Dr. Higgs' March 23, 1998 report, the Office medical adviser noted, *inter alia*, that Dr. Higgs did not discuss residuals of chronic pain, sensory deficit and discomfort. In light of the noted deficiencies in Dr. Higgs' evaluation, the Office medical adviser recommended that appellant be referred for examination by a physician more skilled in the evaluation of permanent impairment.

The Board finds that appellant did not establish that he has more than a three percent permanent impairment of his left upper extremity.

Section 8107 of the Federal Employees' Compensation Act³ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

On appeal, appellant cites Dr. Higgs' March 23, 1998 opinion as evidence that he has in excess of a three percent impairment of the left upper extremity. While Dr. Higgs provided measurements with respect to range of motion and grip strength, he did not provide a rating of appellant's impairment under the A.M.A., *Guides*. Dr. Higgs merely concluded that appellant had a 13 percent impairment of the left upper extremity at the level of the wrist. He neither referred to the protocols of the A.M.A., *Guides* nor offered any explanation for his impairment assessment. Furthermore, the Office medical adviser noted that Dr. Higgs failed to consider other factors, such as pain and sensory deficit, that potentially could effect appellant's overall impairment rating. Inasmuch as he did not provide an impairment rating utilizing the A.M.A., *Guides* (4th ed. 1993), his opinion is of diminished probative value in determining the extent of appellant's permanent impairment.⁵

As previously noted, the December 16, 1998 schedule award was based upon the Dr. McPhaul's September 1, 1998 finding of a three percent impairment. Dr. McPhaul's overall rating was based upon a combination of impairments due to loss of range of motion and pain. In accordance with Figure 26 at page 36 of the A.M.A., *Guides*, Dr. McPhaul correctly noted that appellant's measured wrist flexion of 50 degrees represented a 2 percent impairment of the upper extremity. Additionally, he properly determined that appellant's wrist pain represented a 1 percent impairment of the upper extremity in accordance with Tables 11 and 15 of the A.M.A., *Guides*, at pages 48 and 54, respectively. With respect to both weakness and vascular changes, Dr. McPhaul reported a zero percent impairment based on a lack of documentation. The above-noted impairments for pain and loss of range of motion, when combined in accordance with the Combined Values Chart at page 322 of the A.M.A., *Guides*, represents a total impairment of three percent of the left upper extremity. Inasmuch as Dr. McPhaul's calculation of appellant's left upper extremity impairment conforms to the A.M.A., *Guides* (4th ed. 1993), his findings constitutes the weight of the medical evidence.⁶ Accordingly, appellant has failed to provide any

³ 5 U.S.C. § 8107.

⁴ *James J. Hjort*, 45 ECAB 595 (1994).

⁵ *See Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

⁶ *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

probative medical evidence that he has greater than a three percent impairment of the left upper extremity.⁷

The December 16, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
July 20, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁷ The Act provides that, for a total or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1). In the instant case, appellant does not have a total or 100 percent loss of use of his right arm, but rather a 3 percent loss. As such, appellant is entitled to 3 percent of the 312 weeks of compensation, which is 9.36 weeks.