

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS A. THOMPSON and DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Sandstone, MN

*Docket No. 99-1037; Submitted on the Record;
Issued July 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has greater than a seven percent permanent loss of use of his left arm due to his January 7, 1996 employment injury; and (2) whether appellant received the proper amount of compensation for this permanent impairment.

On January 17, 1996 appellant filed a claim for an injury to his left shoulder sustained on January 7, 1996 by holding up a tipping food cart. Appellant continued to work. The Office of Workers' Compensation Programs accepted that appellant sustained a left shoulder strain. On January 21, 1997 the Office authorized a left rotator cuff repair, which appellant underwent on March 10, 1997, along with a decompression of the left shoulder including a partial excision of the distal clavicle.

On September 7, 1998 appellant filed a claim for a schedule award. On November 17, 1998 the Office issued appellant a schedule award for a seven percent permanent loss of use of the left arm. The period of the award was from July 24 to December 23, 1998.

The Board finds that the case is not in posture for decision on the percentage of loss of use of appellant's left 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

Table 27 of Chapter 3 of the fourth edition of the A.M.A., *Guides* provides for percentages of impairment of the upper extremity after arthroplasty of specific joints or bones. The text accompanying this table states, “[i]n the presence of decreased motion, motion impairments are derived separately (Sections 3.1f through 3.1j) and combined with arthroplasty impairments using the Combined Values Chart.” The surgery authorized by the Office on appellant’s left shoulder included a partial excision of the distal clavicle, one of the bones listed in Table 27. The Office medical adviser who assigned percentages to the findings of appellant’s examining physician assigned one percent for loss of external rotation, but did not assign any percentage for the arthroplasty of the distal clavicle. The case will therefore be remanded to the Office for recalculation of the percentage of permanent impairment to appellant’s left arm consistent with the fourth edition of the A.M.A., *Guides*.

On appeal, appellant questions why his compensation pursuant to the schedule award was limited to the period from July 24 to December 23, 1998 and why he did not receive compensation for periods of disability during which he used paid leave. Payments under the schedule award provision of the Act⁴ are separate from those made under the Act for disability for work. Schedule awards are paid for the number of weeks specified in the Act, and are payable regardless of whether the employee is disabled for work. As the only Office decision in this case is the issuance of its November 17, 1998 schedule award, the Board does not have jurisdiction to determine any issues regarding compensation for disability for work.⁵

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

⁴ 5 U.S.C. § 8107.

⁵ The Board’s jurisdiction is limited by 20 C.F.R. § 501.2(c) to review of final decisions of the Office.

The decision of the Office of Workers' Compensation Programs dated November 17, 1998 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
July 26, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member