

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE PERALES and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, TX

*Docket No. 99-1277; Submitted on the Record;
Issued July 19, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a six percent permanent impairment to the left arm.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a left shoulder sprain in the performance of duty on February 4, 1988. By decision dated January 29, 1999, the Office issued a schedule award for a six percent permanent impairment to the left arm.

The Board has reviewed the record and finds that appellant has not established more than a six percent permanent impairment to the left arm.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

In a report dated November 23, 1998, Dr. Daniel Valdez, an orthopedic surgeon, opined that appellant had a 10 percent permanent impairment to the left arm. He indicated that he combined a five percent impairment for loss of range of motion in the shoulder, with a six

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

² A. George Lampo, 45 ECAB 441 (1994).

percent impairment for mild crepitation.³ An Office medical adviser, in a report dated January 8, 1999, indicated that combining range of motion and crepitation was inappropriate in this case. The Board notes that the A.M.A., *Guides* advise the medical evaluator to avoid duplication of impairments when there are findings of both joint crepitations and limited motion.⁴ The Office has identified specific tables and figures under the A.M.A., *Guides* that should not be combined, in order to avoid duplication of evaluating impairments.⁵ It is, for example, inappropriate to combine Table 19, the table used to determine joint crepitation, with Figures 38, 41 and 44, which are used to evaluate loss of range of motion in the shoulder joint.⁶ Dr. Valdez does combine joint crepitation under Table 19 with the application of figures for loss of range of motion; therefore his opinion that appellant had a 10 percent impairment is of diminished probative value. The Office medical adviser properly found that the impairment for crepitation should be applied in this case, since that impairment is of a greater degree than the loss of range of motion impairment. Under Table 18 the glenohumeral joint has a maximum of 60 percent impairment to the arm and under Table 19 a mild crepitation is 10 percent of the maximum or 6 percent.⁷ Both Dr. Valdez and the Office medical adviser agreed that the impairment for crepitation was six percent in this case.

Accordingly, the Board finds that the Office properly utilized the A.M.A., *Guides* to evaluate the medical evidence of record to determine that appellant had a six percent permanent impairment to the left arm.

The Board notes that the record contains a decision from the Office's Branch of Hearings and Review, with respect to a hearing request, that was issued after appellant filed an appeal with the Board. The Board and the Office may not have concurrent jurisdiction over the same case, and those Office decisions which change the status of the decision on appeal are null and void.⁸

³ Dr. Valdez multiplied the combined value of the 2 impairments (11) by .05 and then rounded the number to 10, without citing to the A.M.A., *Guides* for this method of combining impairments.

⁴ A.M.A., *Guides*, 58 (4th ed. 1993).

⁵ See FECA Bulletin No. 95-17 (issued March 23, 1995).

⁶ *Id.*

⁷ A.M.A., *Guides*, 58, 59.

⁸ *Douglas E. Billings*, 41 ECAB 880, 895 (1990).

The decision of the Office of Workers' Compensation Programs dated January 29, 1999 is affirmed.

Dated, Washington, D.C.
July 19, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member