

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN L. KLEIN and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 98-2055; Submitted on the Record;
Issued June 27, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 15 percent permanent impairment of each upper extremity, for which he received a schedule award.

In a decision dated March 30, 1998, the Office of Workers' Compensation Programs found that the weight of the medical opinion evidence rested with the report of the impartial medical specialist and established that appellant has a 15 percent permanent impairment of each upper extremity.

The Board finds that this case is not in posture for a determination of whether appellant has more than a 15 percent permanent impairment of each upper extremity. The opinion of the impartial medical specialist requires clarification.

Section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations² 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 American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* as the standard for determining the percentage of impairment, and the Board has concurred in such adoption.³

The Office's procedure manual provides that claims examiners should advise any physician evaluating permanent impairment to use the A.M.A., *Guides*, fourth edition, and to

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ See, e.g., *Leisa D. Vassar*, 40 ECAB 1287 (1989).

report findings in accordance with those guidelines.⁴ In his March 5, 1997 report, the impartial medical specialist, Dr. Lawrence H. Schneider, made no reference to the appropriate tables or pages of the A.M.A., *Guides*. He noted that complete destruction of the median nerve, both motor and sensory, would award a patient an impairment of 65 percent of the function of his hand. Dr. Schneider did not identify the source of this estimate of impairment, did not identify the procedure he was following and did not explain how this figure was relevant. Stating that appellant “has nowhere near” complete dysfunction of the median nerve, Dr. Schneider reported:

“So, basing my impairment evaluation on today’s examination and a review of the records, I would state [appellant] has approximately 15 percent loss of function of each of his hands.”

Dr. Schneider determined that appellant had a 14.25 percent loss of function of each upper extremity “since the hand is 95 percent of the upper extremity.”

The opinion of the impartial medical specialist does not establish that he followed the protocols set forth in the A.M.A., *Guides*. It appears that he may have selected a percentage based on the maximum impairment value of the median nerve, but Table 15, page 54, of the A.M.A., *Guides* (fourth edition) indicates that the maximum percentage impairment of the upper extremity due to combined motor and sensory deficits of the median nerve *above the midforearm* is 65 percent. Dr. Schneider did not fully explain his application of the procedures set forth in Tables 11 and 12 on pages 48 and 49 for determining impairment due to pain, sensory or motor deficits or determination for the particular nerve given the reported area of involvement. Dr. Schneider also failed to grade the severity of impairment according to any specific classification, he offered no medical reasoning to explain the percentage of impairment chosen.

Noting that an attorney had complained that “they did not use the A.M.A., [G]uides,” Dr. Schneider remarked: “It should be noted that the A.M.A., [G]uides are just that -- a guide to evaluation of impairment.” And noting that the A.M.A., *Guides* based its evaluation of impairment on restriction of motion, amputation of parts and nerve damage, Dr. Schneider stated:

“It is my opinion that entities like pain really can[no]t be accurately estimated, being so subjective, but the presence of pain should be supported by some objectifying evidence.”

These statements give reason to believe that Dr. Schneider may not have evaluated appellant’s permanent impairment according to the protocols of the A.M.A., *Guides*. The Office’s procedure manual does not require that pain be supported by objectifying evidence before it may be considered. The procedure manual recognizes that injuries sometimes leave objective or subjective impairments that cannot be easily measured by the A.M.A., *Guides*. The effects of factors such as pain and loss of sensation should be explicitly considered along with the

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, Chapter 2.808.6.(a). *Schedule Awards and Permanent Disability Claims* (March 1995).

impairment measurable by the A.M.A., *Guides* and correlated as closely as possible with the factors set forth there. The procedure manual states:

“Whenever pain, discomfort, or loss of sensation is present due to nerve injury or nerve dysfunction ... the evaluating physician should include these factors in arriving at a percentage of impairment.”⁵

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.

The Board will set aside the Office’s March 30, 1998 decision and remand the case for clarification of Dr. Schneider’s evaluation of appellant’s permanent impairment. He should be requested to provide an opinion, which conforms to the protocols of the A.M.A., *Guides* (fourth edition). Dr. Schneider should be asked to identify the applicable procedures, grades, tables and pages applied in reaching his estimate of appellant’s impairment. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant’s entitlement to schedule compensation.

The March 30, 1998 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.
June 27, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Id.*, Chapter 2.808.6.a(2).