

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS D. JOHNSON and DEPARTMENT OF JUSTICE, BORDER
PATROL, SAN DIEGO SECTOR TRAINING, Spring Valley, CA

*Docket No. 99-1003; Submitted on the Record;
Issued June 12, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant is entitled to more than a 10 percent permanent impairment for the left arm, for which he has already received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant is not entitled to more than a 10 percent permanent impairment for the left arm, for which he has already received a schedule award.

On February 26, 1997 appellant, then a 30-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 1997 he dislocated his left shoulder while moving books.

By letter dated April 3, 1997, the Office of Workers' Compensation Programs accepted appellant's claim for a dislocated left shoulder and labrum tear, and authorized shoulder arthroscopy. By letter dated January 21, 1998, the Office further accepted appellant's claim for a consequential lumbar strain.

The Office received medical evidence indicating that appellant had a five percent impairment of the left shoulder. Subsequently, the Office received medical evidence finding that appellant had a 24 percent impairment of the left shoulder. In a telephone conversation on August 20, 1998, the Office advised appellant to submit a claim for a schedule award (Form CA-7).

On October 15, 1998 the Office received appellant's claim for a schedule award dated June 25, 1998 accompanied by factual and medical evidence.

An Office medical adviser reviewed a statement of accepted facts and appellant's medical records and determined that appellant had a 10 percent impairment of the left upper extremity.

By decision dated December 1, 1998, the Office granted appellant a schedule award for a 10 percent permanent impairment of the left shoulder for the period June 24, 1998 through January 28, 1999.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation,² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.³ 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 under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

In support of his claim for a schedule award, appellant submitted a November 21, 1997 medical report of Thomas W. Harris, an orthopedic surgeon and appellant's treating physician. In this report, he provided appellant's complaints and a history of appellant's February 25, 1997 employment injury, medical treatment, work status and job description. Dr. Harris also provided appellant's military, social and family histories. He further provided his findings on physical examination of appellant's right shoulder and physical and objective examination of appellant's left shoulder. Dr. Harris diagnosed glenohumeral instability of the left shoulder, status post-arthroscopy with capsulorrhaphy of the left shoulder, left ulnar nerve with subjective complaints on normal examination and lumbar spine sprain/strain with discogenic disease which had not been accepted by the Office. He opined that appellant had reached a permanent and stationary level for the above industrial injury to the left shoulder on November 21, 1997 and noted appellant's work restrictions. Dr. Harris indicated his range of motion findings for the left upper extremity, which included extension of 30 degrees, flexion of 170 degrees, internal rotation of 50 degrees, external rotation of 80 degrees, abduction of 170 degrees and adduction of 20 degrees.⁵ Utilizing the fourth edition of the A.M.A., *Guides*, he stated that forward flexion constituted a one percent impairment based on Table 38, page 43. Dr. Harris further stated that abduction constituted a zero percent impairment and external rotation constituted a four percent impairment. Using the Combined Values Chart on page 322, he determined that four percent plus one percent equaled a five percent impairment of the left shoulder. Dr. Harris noted appellant's subjective and objective factors of permanent partial disability. Regarding causation, he stated that appellant's injury was directly related to his February 25, 1997 employment injury based on his physical and objective examinations and medical treatment. Dr. Harris concluded

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ Dr. Harris also noted his range of motion findings for appellant's right upper extremity.

that appellant was able to perform the duties of his position as a border patrol agent and noted appellant's future medical treatment.

Prior to appellant's filing of a schedule award, the Office received Dr. Harris' June 24, 1998 medical report and his corrected report of the same date.⁶ In the former medical report, he reiterated his findings in his November 21, 1997 medical report regarding the history of appellant's February 25, 1997 employment injury, medical treatment, work status and job description. Dr. Harris also reiterated appellant's military, social and family histories, his findings on physical and objective examination of appellant's right and left shoulders. His range of motion findings included extension of 30 degrees, flexion of 170 degrees, internal rotation of 60 degrees, external rotation of 50 degrees, abduction of 170 degrees and adduction of 20 degrees. Dr. Harris noted his findings on physical and objective examination of appellant's back which he stated was injured during physical therapy. He reiterated appellant's previous diagnoses and provided an additional diagnosis of left ulnar nerve entrapment of the elbow which was mild. Dr. Harris stated that appellant reached maximum medical improvement on June 24, 1998 regarding the left shoulder and lumbar spine and reiterated appellant's work restrictions. Regarding his range of motion findings, Dr. Harris found that flexion was one percent, abduction was zero percent, external rotation was four percent based on Table 38, page 43. Utilizing the Combined Values Chart, he determined that a four percent and a one percent impairment constituted a five percent impairment. Regarding appellant's left elbow, Dr. Harris determined that appellant had a 10 percent impairment of the upper extremity based on Table 16, page 57 of the fourth edition of the A.M.A., *Guides*. Utilizing the Combined Values Chart, he determined that a 10 percent impairment of the left shoulder and a five percent impairment of the left elbow constituted a 15 percent impairment of the left upper extremity. The Office medical adviser noted that appellant had a 10 percent loss of grip of strength index on the left upper extremity secondary to his combined shoulder injury and ulnar neuropathy. Utilizing Tables 34 and 52 on page 65, he concluded that appellant had a 10 percent upper extremity impairment. Based on the Combined Values Chart, the Office medical adviser found that a 15 percent impairment of the left upper extremity and a 10 percent impairment for loss of grip of strength constituted a 24 percent impairment. He reiterated appellant's subjective and objective factors of permanent partial disability, ability to work at his regular job and future medical treatment and the cause of appellant's disability.

Dr. Harris' June 24, 1998 24 percent impairment rating is insufficient to establish that appellant is entitled to an additional schedule award. He did not determine an impairment rating based on all of his range of motion findings for appellant's left shoulder. Further, appellant's left elbow condition was not accepted by the Office.

An Office medical adviser reviewed a statement of accepted facts and appellant's medical records. He noted a history of appellant's February 25, 1997 employment injury and medical treatment and Dr. Harris' range of motion findings for the left shoulder and elbow and diagnoses. The Office medical adviser diagnosed status post left shoulder arthroscopy with capsulorrhaphy, left ulnar neuropathy of the elbow and lumbar sprain/strain with degenerative joint and degenerative disc disease. Based on Figure 38, page 43, he determined that appellant

⁶ Dr. Harris' corrected final medical report dated June 24, 1998 appears to be the same as his original report of the same date.

had a one percent impairment for loss of shoulder flexion and a one percent impairment for loss of shoulder extension. Further, the Office medical adviser determined that appellant had a one percent impairment for loss of shoulder abduction and a one percent impairment for loss of shoulder adduction based on Figure 41, page 44. In addition, he determined that appellant had a one percent impairment for loss of shoulder external rotation and a two percent impairment for loss of shoulder internal rotation based on Figure 44, page 45. The Office medical adviser concluded that appellant had a seven percent impairment for loss of shoulder range of motion. He then determined that appellant had Grade 3 pain/decreased sensation which interfered with the function (constituting a 60 percent impairment based on Table 11, page 48) of the axillary nerve/deltoid muscle (constituting a 5 percent impairment based on Table 15, page 54). The Office medical adviser multiplied 60 percent by 5 percent and determined that appellant had a 3 percent impairment for pain interfering with function. Utilizing the Combined Values Chart, he determined that a 3 percent for pain interfering with function and a 7 percent impairment for loss of shoulder motion, constituted a 10 percent impairment of the left upper extremity. He stated that, although appellant was noted to have some mild ulnar nerve decreased sensation and weakness of left grip strength as a result of his ulnar neuropathy, a schedule award was not being provided for this as it did not appear to be an accepted work condition. The Office medical adviser also noted that appellant did not have any residual impairment of his lower extremities as a result of his injury to the lumbar spine.

Inasmuch as the Office medical adviser properly applied the fourth edition of the A.M.A., *Guides*, the medical evidence of record does not support a finding that appellant is entitled to an additional schedule award at this time.

The December 1, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
June 12, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member