

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD B. WISE and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Southeastern, PA

*Docket No. 98-2115; Submitted on the Record;
Issued March 3, 2000*

DECISION and ORDER

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

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

On February 16, 1995 appellant, then a 40-year-old mailhandler, filed an occupational disease claim alleging that he sustained a rotator cuff strain due to factors of his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for rotator cuff strain of the left shoulder and left shoulder impingement syndrome. The Office authorized an arthroscopic subacromial decompression of the left shoulder and rotator cuff, and a resection of the left shoulder acromioclavicular joint.

On June 24, 1997 appellant filed a claim for a schedule award. By decision dated July 30, 1997, the Office granted appellant a schedule award for a 15 percent permanent impairment of the left upper extremity. The period of the award ran for 46.80 weeks from April 3, 1997 to February 24, 1998.

By letter dated August 8, 1997, appellant, through his representative, requested a hearing before an Office hearing representative which was held on January 26, 1998. In a decision dated April 3, 1998, the hearing representative affirmed the Office's July 30, 1997 decision.

The Board finds that appellant has no more than a 15 percent permanent impairment of the left upper extremity for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act,¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

specified body members, functions or organs. 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*, (fourth edition, 1993) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

In a report dated May 12, 1997, Dr. Ronald J. Potash, a Board-certified surgeon, listed findings on range of motion of appellant's left shoulder as follows: "forward elevation 135/80 degrees; abduction 0 to 110/80 degrees; cross over/adduction 0 to 75/75 degrees; external rotation 0 to 90/90 degrees; [and] posterior reach (internal rotation) is abnormal to the spine level of L1." Dr. Potash found that grip strength testing revealed "46 [kilograms] of force strength in the right hand versus 23 [kilograms] of force strength in the left hand." He determined that, pursuant to the A.M.A., *Guides*, appellant had a three percent impairment due to loss of flexion and a three percent impairment in abduction for a total of a six percent impairment in range of motion. Dr. Potash further found that appellant had a 20 percent impairment in grip strength and a 24 percent impairment due to shoulder resection arthroplasty. He combined these findings and concluded that appellant had a total impairment of the left upper extremity of 43 percent.

On July 18, 1997 an Office medical adviser reviewed Dr. Potash's report and properly applied the provisions of the A.M.A., *Guides* to his findings. The Office medical adviser reviewed Dr. Potash's finding that appellant had a six percent impairment for loss of range of motion.⁴ He noted, however, that appellant had a 10 percent impairment due to the resection arthroplasty of his acromioclavicular joint pursuant to Table 27 on page 61 of the A.M.A., *Guides*. He noted that the 24 percent impairment found by Dr. Potash was for a glenoheumoral arthroplasty.⁵ The Office medical adviser found that, according to page 64 of the A.M.A., *Guides*, grip strength should not be included in the calculation of appellant's impairment. He combined the 6 percent impairment due to loss of range of motion with the 10 percent impairment due to the resection arthroplasty and concluded that appellant had a 15 percent permanent impairment of his left upper extremity.

The Board notes that the Office medical adviser properly did not include loss of grip strength in determining the extent of appellant's impairment. FECA Bulletin Number 95-17, issued March 23, 1995, provides that "[w]hen a table based on a specific diagnosis is used, no additional increment for pain and loss of strength should be included in the determination of impairment."⁶ Further, according to the A.M.A., *Guides*, a significant role should not be

³ James J. Hjort, 45 ECAB 595 (1994).

⁴ A.M.A., *Guides* at 43-44, Figures 38 and 41.

⁵ *Id.* at 61, Table 27.

⁶ FECA Bulletin No. 96-17, issued September 20, 1996, references the tables listed in FECA Bulletin No. 95-17 without changes. Further, the Office has implemented FECA Bulletin No. 95-17 in its procedure manual. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exh. 4 (October 1995).

accorded strength measurements as they are “influenced by subjective factors that are difficult to control.”⁷ The report of the Office medical adviser is the only medical report which evaluated appellant’s permanent impairment properly utilizing the A.M.A., *Guides*, and thus constitutes the weight of the medical evidence.⁸

The decisions of the Office of Workers’ Compensation Programs dated April 3, 1998 and July 30, 1997 are hereby affirmed.

Dated, Washington, D.C.
March 3, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁷ A.M.A., *Guides* at 64.

⁸ *Joseph Santaniello*, 42 ECAB 710 (1991).