

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS E. REYNOLDS and DEPARTMENT OF DEFENSE,  
DEFENSE COMMISSARY AGENCY, Fort Knox, KY

*Docket No. 99-98; Submitted on the Record;  
Issued May 5, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant had greater than a 17 percent permanent impairment of the right upper extremity for which he received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 17 percent impairment of the right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing regulations<sup>2</sup> schedule awards are payable for permanent impairment of 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*<sup>3</sup> (hereinafter A.M.A., *Guides*) have been adopted by the Office of Workers' Compensation Programs and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup>

On November 18, 1997 appellant, then a 49-year-old meat work leader, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his right shoulder when he lifted a large box of meat weighing over 100 pounds and the left handle broke, causing the box to fall and hit his right hand. A right shoulder arthogram

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993).

<sup>4</sup> *Richard F. Kastan*, 47 ECAB 651, 652 (1997).

taken by Dr. Stewart M. Couch, a Board-certified radiologist, on December 11, 1997, revealed a large tear of the rotator cuff, and an open Neer acromioplasty and repair of the right rotator cuff was performed by Dr. William C. Nash, a Board-certified orthopedic surgeon, on December 17, 1997. On January 16, 1998 the Office accepted appellant's claim for right rotator cuff tear and requested that appellant's treating physician, Dr. Nash, determine the extent of the permanent partial impairment of appellant's right shoulder. By medical report dated January 20, 1998, Dr. Nash noted that it was "too early to know if he will have any permanent restrictions."

On June 23, 1998 the Office again requested that Dr. Nash determine the extent of permanent partial impairment of appellant's right rotator cuff due to the employment injury of November 16, 1997. On July 31, 1998 Dr. Nash determined that appellant had a 15 percent impairment of the right upper extremity. He specifically noted that appellant had retained internal rotation from 0 degrees to 20 degrees, external rotation from 0 degrees to 10 degrees, forward elevation from 0 degrees to 110 degrees, backward elevation from 0 degrees to 15 degrees, abduction from 0 degrees to 120 degrees and adduction from 0 degrees to 15 degrees.

The Office referred this case to the Office medical adviser who determined that appellant had a 17 percent impairment of the right upper extremity by applying Dr. Nash's retention figures to the A.M.A., *Guides*. Specifically, he determined that appellant's retention of forward elevation equaled five percent and his retention of backward elevation equaled a two percent impairment.<sup>5</sup> He further found that appellant had a retention of abduction of three percent and retention of adduction of one percent.<sup>6</sup> Next, he determined that appellant had a four percent impairment based on internal rotation and a two percent impairment based on external rotation.<sup>7</sup> Adding these figures together, the Office medical adviser determined that appellant had a 17 percent permanent impairment to his right upper extremity.

By decision dated August 25, 1998, the Office awarded appellant benefits based on a 17 percent loss of use of the right arm.

The Board finds that the Office medical adviser accurately applied the A.M.A., *Guides*, and properly determined that appellant has no more than a 17 percent impairment to his right upper extremity, for which he received a schedule award. It is appellant's burden to submit sufficient evidence to establish his claim.<sup>8</sup> Appellant submitted no medical evidence that would justify a higher award.

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<sup>5</sup> A.M.A., *Guides* at 43, Figure 38.

<sup>6</sup> A.M.A., *Guides* at 44, Figure 41.

<sup>7</sup> A.M.A., *Guides* at 45, Figure 44.

<sup>8</sup> See *Annette M. Dent*, 44 ECAB 403 (1993).

The August 25, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
May 5, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member