

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS ROSS and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISONS, Fort Worth, TX

*Docket No. 01-134; Submitted on the Record;
Issued August 7, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to more than a seven percent permanent impairment of his right upper extremity for which he received a schedule award.

The Board has reviewed the case on appeal and finds that appellant is not entitled to more than a seven percent permanent impairment of his right upper extremity.

On October 31, 1997 appellant, then a 37-year-old correctional security officer, filed a notice of traumatic injury alleging that, on October 29, 1997, while lifting and carrying an inmate from an aircraft, he fell in the aisle hitting his arm and right shoulder against a cabinet. The Office of Workers' Compensation Programs accepted appellant's claim on January 8, 1998 for right shoulder abrasion, cervical strain and thoracic strain. Appellant stopped work on July 19, 1999 and underwent surgery on July 20, 1999.

On May 16, 2000 appellant filed a claim for a schedule award.

On August 16, 2000 the Office awarded appellant a seven percent permanent disability for the right upper extremity (shoulder).

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² 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 for all claimants the Office adopted the American Medical

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

Association, *Guides to the Evaluation of Permanent Impairment*³ as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁴

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that, in obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."⁵ This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁶

In this case, appellant's attending physician, Dr. Allen S. Kent, a Board-certified orthopedic surgeon, reported that appellant reached his maximum medical improvement on April 20, 2000. Dr. Kent examined appellant's range of motion and found mild crepitus in his right shoulder glenohumeral joint. Dr. Kent used the fourth edition of the A.M.A., *Guides*, Figures 38, 41, and 44 on pages 43 to 45, to find a seven percent total impairment of the right upper extremity. He also measured appellant's joint crepitation, finding a six percent impairment of the right upper extremity.

The Office referred Dr. Kent's report to the Office medical adviser. He reviewed the medical evidence and concluded, based on Dr. Kent's April 20, 2000 report, that appellant had a seven percent impairment of the right upper extremity.⁷ The medical adviser noted that FECA Bulletin 95-17 cautions against using loss of motion and crepitus simultaneously in determining permanent partial impairment. He noted that he used loss of motion because it better reflected the functional condition of the arm and resulted in a greater impairment rating.

The Office medical adviser correctly applied the A.M.A., *Guides* to the medical findings of record. Using Figure 38 page 43, the district medical adviser measured appellant's flexion motion of the right shoulder to be 125 degrees, or 3 percent impairment. Again using Figure 38 page 43, the district medical adviser measured appellant's extension motion of the right shoulder to be 30 degrees, or 1 percent impairment. Using Figure 41 page 44, he measured appellant's abduction of motion to be 145 degrees or 1 percent impairment, and a 35 degrees adduction, or 0 percent impairment. Lastly, using Figure 44 page 45, the district medical adviser measured appellant's internal rotation to be 47 degrees or 2 percent impairment, and his external rotation

³ A.M.A., *Guides* (4th ed. 1993).

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

⁶ *Noe L. Flores*, 49 ECAB 344 (1998).

⁷ The Office medical adviser actually indicates the left upper extremity in his report.

was 90 degrees equaling a 0 percent impairment. The total percentage of impairment equaled seven percent.

The district medical adviser compared Dr. Kent's physical findings to the appropriate figures and pages in the A.M.A., *Guides* and properly calculated a seven percent permanent impairment of the right upper extremity.

In his April 20, 2000 report, Dr. Kent combined the results from the loss of motion tables and the joint crepitation tables to arrive at a 13 percent total impairment. The A.M.A., *Guides* states on page 38 under 3.1m, Impairment Due to Other Disorders of the upper extremity that the evaluation "must take care to avoid duplication of impairments when other findings" such as limited motion, are present. These findings "might indicate a greater severity of the same pathological process and take precedence over evaluation of joint crepitation which should not be rated in that instance." Thus, FECA Bulletin No. 95-17 states that loss of motion and crepitus figures may not be rated simultaneously because that would constitute duplication of impairment.⁸ The Board finds that the Office medical adviser correctly determined appellant's level of permanent impairment to be seven percent by using only loss of motion.

The August 16, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 7, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁸ FECA Bulletin No. 95-17, issued March 23, 1995.