

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET HAUK and DEPARTMENT OF JUSTICE,
U.S. BORDER PATROL, El Paso, TX

*Docket No. 00-2497; Submitted on the Record;
Issued June 27, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than an eleven percent permanent impairment of her left upper extremity for which she received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than an eleven percent permanent impairment of her left upper extremity for which she received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.³ The schedule award provision of the Act⁴ and its implementing regulation⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

In this case, on July 20, 1995 appellant, then a 34-year-old border patrol agent trainee, filed a claim for traumatic injury alleging that she injured her left elbow when she fell in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for fracture of the left radial head. On January 30, 1997 appellant filed a claim for a schedule award. In a decision dated April 22, 1997, the Office denied her claim for a schedule award on the grounds that the record contains insufficient medical evidence to support appellant's claim. By letter dated May 14, 1997, appellant requested reconsideration of the Office's decision and submitted additional medical evidence in support of her request. In an award of compensation dated August 11, 1999, the Office awarded her a schedule award for an eleven percent permanent impairment of her left upper extremity.

In support of her claim for a schedule award, appellant submitted a medical report dated April 30, 1997 from Dr. Richard S. Westbrook, her treating Board-certified orthopedic surgeon, who noted appellant's history of radial head fracture and continuing complaints of significant discomfort with limited range of motion. He noted that testing of the left elbow revealed 120 degrees of flexion, 24 degrees extension, 40 degrees pronation and 40 degrees supination. Dr. Westbrook also noted that range of motion testing of appellant's left wrist revealed 73 degrees of flexion, 68 degrees of extension, 13 degrees of radial deviation and 32 degrees of ulnar deviation. He stated that applying these results to the fourth edition of the A.M.A., *Guides*, equated to a 9 percent impairment of the left upper extremity due to limited range of elbow motion and an additional 2 percent impairment of the left upper extremity due to her limited wrist motion, for a total of an 11 percent impairment of the left upper extremity due to limited range of motion. Dr. Westbrook also noted that appellant had a 7 percent permanent impairment of the left elbow due to crepitation, which, when combined with the other upper extremity values, equated to an 18 percent permanent impairment of the left upper extremity.

On August 3, 1999 at the request of the Office, Dr. R. Meador, an Office medical adviser and Board-certified internist, reviewed Dr. Westbrook's April 30, 1997 report as it pertained to appellant's left upper extremity. Dr. Meador noted Dr. Westbrook's findings on physical examination and applied the elbow range of motion values obtained by Dr. Westbrook for flexion, extension, supination and pronation to Figures 32 and 35 on page 40 of the A.M.A., *Guides*. He concluded that, based on the test results, appellant demonstrated a nine percent permanent impairment of the left elbow. Dr. Meador further applied the wrist range of motion results obtained by Dr. Westbrook for flexion, extension, radial deviation and ulnar deviation to Figures 26 and 29 on pages 36 and 38 of the A.M.A., *Guides* and concluded that, based on the test results, appellant demonstrated a 2 percent permanent impairment of the left wrist, which, when combined with the left elbow impairment, equated to an 11 percent permanent impairment of the left upper extremity. He explained that the seven percent difference between his conclusion and that of Dr. Westbrook was due to Dr. Westbrook's inclusion in his calculations of an additional seven percent impairment for left elbow crepitation. Dr. Meador stated that he did not include crepitation in his calculations as to do so would represent a duplication of award.

The Board has held that, if an examining physician does not properly use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the record and apply the A.M.A., *Guides* to the examination findings reported

by the examining physician.⁶ The Board has reviewed the calculations provided by the Office medical examiner and finds that he properly applied the relevant portions of the A.M.A., *Guides* to the physical findings described in Dr. Westbrook's report. Specifically, the Board notes that with respect to joint crepitation with motion, Chapter 3.1m of the A.M.A., *Guides*, page 58, specifically provides that "the evaluator must take care to avoid duplication of impairments when other findings, such as synovial hypertrophy, carpal collapse with arthritic changes or limited motion are present. Those findings might indicate a greater severity of the same pathologic process and take precedence over evaluation of joint crepitation, which should not be rated in that instance." As the Office medical examiner properly applied the A.M.A., *Guides* and provided full rationale for his conclusions and as there is no rationalized medical evidence in the record supporting more than an eleven percent permanent impairment of appellant's left upper extremity, the Board finds that appellant has no more than an eleven percent permanent impairment of her left upper extremity.

The decision of the Office of Workers' Compensation Programs dated August 10, 1999 is hereby affirmed.

Dated, Washington, DC
June 27, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Lena P. Huntley*, 46 ECAB 643 (1995).