

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS M. PETROSKI and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, PA

*Docket No. 01-1667; Submitted on the Record;  
Issued April 5, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant met his burden of proof to establish that he has more than a 52 percent permanent impairment of his right arm, for which he received a schedule award.

The Board finds that appellant did not meet his burden of proof to establish that he has more than a 52 percent permanent impairment of his right arm, for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,<sup>2</sup> including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.<sup>3</sup>

The schedule award provision of the Act<sup>4</sup> and its implementing regulation<sup>5</sup> 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*

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

*Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>6</sup>

On July 26, 1996 appellant, then a 54-year-old tractor trailer operator, sustained multiple injuries when his vehicle was involved in an accident. The Office of Workers' Compensation Programs accepted that appellant sustained a right hand and wrist sprain, right lateral epicondylitis and right knee bruise.<sup>7</sup> Appellant underwent surgical procedures -- a right radial tunnel release on February 13, 1997; a right elbow arthroscopy and arthrotomy with lateral epicondylitis decompression on June 12, 1997; and a right shoulder arthroscopy with complete synovectomy and capsular release on January 7, 1998. By award of compensation dated September 22, 1999, the Office granted appellant a schedule award for a 52 percent permanent impairment of his right arm. By decision dated and finalized March 20, 2000, an Office hearing representative affirmed the Office's September 22, 1999 decision. The Office based its award on a July 19, 1999 report in which an Office medical adviser interpreted the findings of Dr. David Weiss, an osteopath.

In his July 19, 1999 report, the Office medical adviser properly applied the relevant standards of the A.M.A., *Guides* to determine that appellant had a right arm impairment of 52 percent. He determined that appellant was entitled to a 28 percent impairment rating for arthroplasty of his elbow<sup>8</sup> and a 20 percent rating for moderate radial nerve entrapment at the forearm.<sup>9</sup> The Office medical adviser further determined that appellant was entitled to a 13 percent rating for motor weakness of the musculocutaneous (biceps) muscles (obtained by multiplying the 50 percent motor deficit value times the maximum impairment value of 25) and a 4 percent rating for motor weakness of the suprascapular (supraspinatus) muscles (obtained by multiplying the 25 percent motor deficit value times the maximum impairment value of 16).<sup>10</sup> He used the Combined Values Chart to arrive at a total right arm impairment figure of 52 percent.<sup>11</sup>

In his March 3, 1999 report, Dr. Weiss detailed the findings of his examination of appellant. Dr. Weiss provided a calculation of appellant's permanent impairment which was similar to that provided by the Office medical adviser. However, Dr. Weiss also indicated that appellant was entitled to an additional impairment rating of 24 percent for arthroplasty of his right shoulder. However, the record does not provide any indication that appellant underwent

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<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> The Office also accepted that appellant sustained an episode of major depression related to employment injuries.

<sup>8</sup> See A.M.A., *Guides* at 61, Table 27 (4<sup>th</sup> ed. 1993).

<sup>9</sup> See *id.* at 57, Table 16.

<sup>10</sup> See *id.* at 49, 54, Tables 12, 15.

<sup>11</sup> *Id.* at 322-23.

arthroplasty of his right shoulder, either of the resection or implant variety.<sup>12</sup> Therefore, this aspect of the opinion of Dr. Weiss is of limited probative value in that it is not in accordance with the standards of the A.M.A., *Guides*.<sup>13</sup>

As the report of the Office medical adviser provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.<sup>14</sup> Therefore, appellant did not meet his burden of proof to establish that he has more than a 52 percent permanent impairment of his right arm for which he received a schedule award.

The decision of the Office of Workers' Compensation Programs dated March 20, 2000 is affirmed.

Dated, Washington, DC  
April 5, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>12</sup> Rather, appellant underwent a right shoulder arthroscopy with complete synovectomy and capsular release. *See* A.M.A., *Guides* at 60, Table 27 (4<sup>th</sup> ed. 1993). The record reflects that appellant had muscle weakness in his right shoulder. However, this deficit would be accounted for by the ratings for musculocutaneous (13 percent) and suprascapular (4 percent) muscle weakness. Moreover, the range of motion values obtained by Dr. Weiss for the right shoulder were normal; *see id.* at 43-45, Figures 38, 41, 43.

<sup>13</sup> *See James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

<sup>14</sup> *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).