

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE CRIST and DEPARTMENT OF THE ARMY,
LONDON LOCKS & DAM, London, WV

*Docket No. 01-1676; Submitted on the Record;
Issued March 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On March 30, 1999 appellant, then a 45-year-old lock and dam operator, filed a notice of traumatic injury claiming that on March 26, 1999 he injured his right shoulder while lifting a 100-pound piece of metal over his head. On March 30, 1999 Dr. David Life diagnosed appellant with right shoulder strain. A magnetic resonance imaging performed by Dr. Ronald Cordell, a Board-certified radiologist, on June 26, 1999 revealed a thoracic nerve injury and central bulging of the C5-6 intervertebral disc without herniation. An electromyogram test performed on September 28, 1999 also showed damage to the dorsal scapular nerve. Dr. Harry Fathy, in a June 16, 1999 report, indicated that appellant had also injured his long thoracic nerve which had caused a winging of the scapula.

In a report received on July 31, 2000, appellant's attending physician, Dr. Iraj Derakhshan, a Board-certified psychiatrist and neurologist, indicated that appellant had a 50 percent whole person permanent impairment. Appellant filed a claim for a schedule award on July 19, 2000.

By letter dated August 7, 2000, the Office of Workers' Compensation Programs referred appellant's case record to the district medical adviser for a schedule award evaluation. The district medical adviser opined on August 17, 2000 that Dr. Derakhshan's opinion was not consistent with the medical evidence of record and recommended a second opinion.

In a second opinion report from Dr. Tommasina P. Rugino received on November 6, 2000, Dr. Rugino diagnosed appellant with dorsal scapula neuropathy and stated that he had reached maximum medical improvement. Using the fourth edition of the A.M.A., *Guides to the Evaluation of Permanent Impairment*, Dr. Rugino found that appellant had a 1.25 percent permanent impairment of his right arm.

On April 6, 2001 the district medical adviser stated that Dr. Rugino correctly applied the fourth edition of the A.M.A., *Guides* and that appellant had a one percent permanent impairment of the right arm. He also indicated that the values for the dorsal scapula nerve used by Dr. Rugino were the same in the fifth edition of the A.M.A., *Guides*.

By decision dated April 16, 2001, the Office awarded appellant a one percent permanent disability for the right arm.

The Board finds that appellant has no more than a one percent permanent impairment of the right arm.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 A.M.A., *Guides*³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

In this case, Dr. Rugino examined appellant on September 20, 2000 and opined that his dorsal scapula neuropathy was related to his work injury of March 1999. She performed tests of sensory and motor deficits of the dorsal scapular nerve, and using the fourth edition of the A.M.A., *Guides*, found that appellant had a 1.25 percent permanent impairment of his right arm. The district medical adviser noted that the values for dorsal scapula nerve were the same in Table 16-15, page 492 of the current fifth edition of the A.M.A., *Guides*, and also gave appellant a one percent impairment rating for the right arm.

In applying Table 16-15, page 492 of the fifth edition of the A.M.A., *Guides*, motor deficit to the dorsal scapular nerve represents the same maximum five percent impairment as in Table 15, page 54 of the fourth edition of the A.M.A., *Guides*. Table 16-15 also references the grading table at Table 16-11, page 484, which carries the same grading scheme as used in the fourth edition. Applying Table 16-15, grading motor deficit at Grade 4, the procedure states to multiply the severity of the motor deficit by the maximum impairment value to obtain the upper extremity impairment for each structure involved. In this case, the motor deficit of Grade 4 is multiplied by 25 percent, which equals 1.25, or a 1 percent impairment of the right upper extremity. The Board finds that appellant has no more than a one percent permanent impairment of the right upper extremity.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides*, (5th ed. 2001).

⁴ *Supra* note 2.

The April 16, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 22, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member