

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERANIMO N. BANIQUED and U.S. POSTAL SERVICE,
POST OFFICE, Chula Vista, CA

*Docket No. 03-257; Submitted on the Record;
Issued March 5, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a three percent impairment of the right shoulder, for which he received a schedule award.

On April 20, 1996 appellant, then a 42-year-old letter carrier, filed a claim for occupational disease, alleging that he sustained an injury to his right shoulder while in the performance of duty.

The Office of Workers' Compensation Programs accepted appellant's herniated disc at C5-6 and authorized right shoulder surgery.

On January 30, 2002 appellant filed a claim for a schedule award.

In a report dated March 12, 2002 and signed on August 16, 2002, Dr. Thomas Harris, appellant's treating physician and an orthopedic surgeon, stated that appellant had a three percent impairment of the right upper extremity.

In a report dated October 6, 2002, an Office medical adviser stated that, based on Dr. Harris' report, appellant had a three percent impairment of the right upper extremity.

In a worksheet dated October 22, 2002, the Office stated that appellant's rate of pay at the time his total disability began on September 30, 1996 was \$488.10 and that his schedule award would be based on 75 percent of that amount.

By decision dated October 22, 2002, the Office awarded appellant a three percent schedule award for right shoulder impairment. The award ran from March 12 to May 16, 2002 and was paid at a weekly amount of \$366.08, which was 75 percent of appellant's weekly pay at the time he was initially totally disabled.

The Board finds that appellant failed to establish more than a three percent impairment of the right shoulder, for which he had received a schedule award.

The schedule award provision 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

In a report dated March 12, 2002 and signed on August 16, 2002, Dr. Harris stated that appellant had reached maximum medical improvement. He further noted that, based on Table 15-15, page 424 of the A.M.A., *Guides*, 5th ed.,⁴ appellant had pain that interfered with some activities (60 percent) of the C8 (5 percent) Table 15-17⁵ resulting in a 3 percent upper extremity impairment. The Office medical adviser agreed with this evaluation and the record is devoid of evidence, which would support an award greater than three percent, which appellant had received from the Office previously.

On appeal appellant questioned the weekly compensation amount of \$366.08, the number of weeks of compensation and the time frame of March 12 to May 16, 2002, for the period of award. Appellant's compensation amount is based on 75 percent of his gross weekly pay at the time he was initially totally disabled as a result of his condition. In this case, appellant's shoulder surgery was performed in September 1996, the employing establishment established that his weekly pay rate on that day was \$488.10, based on his hourly rate of \$13.03 an hour for 37.46 hours of work a week. The period of compensation runs from the date of maximum medical improvement, which Dr. Harris noted in his March 12, 1996 report was reached that day. Finally, section 8107 of the Act specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.⁶

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ A.M.A., *Guides* (5th ed. 2001) 424, Table 15-15.

⁵ *Id.* at Table 15-17.

⁶ *See supra* note 1.

The October 22, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 5, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member