

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY D. FRISBY and U.S. POSTAL SERVICE,  
POST OFFICE, Little Rock, Ark.

*Docket No. 96-622; Submitted on the Record;  
Issued March 12, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant is entitled to a schedule award for more than 14 percent permanent impairment of his left upper extremity, 18 percent permanent impairment of his right upper extremity and 42 percent permanent impairment of his left leg.

The Board has duly reviewed the case on appeal and finds the case is not in posture for a decision.

Appellant filed a claim alleging on January 5, 1991 he was involved in a motor vehicle accident in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for fracture of left femoral condyle, fracture of left ulna nos, and anterior dislocation of the left elbow. The Office also accepted fracture of right lower humerus nos and broken teeth. Appellant filed a claim requesting a schedule award on April 3, 1995 and by decision dated October 25, 1995, the Office granted appellant a schedule award for 14 percent permanent impairment of his left arm, 18 percent impairment of his right arm and 42 percent impairment of his left leg.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guide to the*

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<sup>1</sup> 5 U.S.C. §§ 8101-8193, 8107.

*Evaluation of Permanent Impairment*<sup>2</sup> as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>3</sup>

The Office requested that appellant's attending physician, Dr. Robert S. Bell, a Board-certified orthopedic surgeon, provide a report regarding the degree of appellant's permanent impairment due to his accepted employment injuries. The Office asked that Dr. Bell correlate his findings with the A.M.A., *Guides*. In a report dated August 24, 1995, Dr. Bell submitted his findings. The Office medical adviser reviewed these findings and applied the A.M.A., *Guides*.

Dr. Bell stated that appellant had residual hand weakness and numbness from his left median nerve injury including aching in his hand and numbness in his long and ring fingers. Dr. Bell concluded that appellant had 30 percent impairment to his left hand and 27 percent impairment to the upper extremity due to numbness in the distribution of the median nerve.<sup>4</sup> In a report dated April 22, 1994, Dr. Bell noted the numbness in appellant's left median nerve distribution and found 30 to 40 percent loss of sensation. The Office medical adviser reviewed these reports and concluded that appellant had 35 percent impairment of his left median nerve, a grade 3 impairment.<sup>5</sup> The Office medical adviser then multiplied this impairment by the maximum value of the median nerve, 38 percent, to reach an impairment of 13 percent.<sup>6</sup>

Dr. Bell indicated that appellant had a mild loss of flexion but did not provide impairment rating. He further found that appellant's elbow lacked 15 degrees of full extension. The A.M.A., *Guides* indicate that lack of extension of 15 degrees is a 1.5 or 2 percent impairment of the joint. Dr. Bell also stated that appellant had 15 degrees loss of supination. A loss of 15 degrees of supination is a 0.5 or 1 percent impairment under the A.M.A., *Guides*.<sup>7</sup> The A.M.A., *Guides* provide that loss of range of motion of the upper extremity is added for 3 percent impairment.<sup>8</sup> Combining 13 percent for loss of sensation with 3 percent loss of range of motion,<sup>9</sup> appellant has an impairment of his left upper extremity of at least 16 percent<sup>10</sup> without considering any loss of range of motion for flexion.

Dr. Bell found that appellant had residual loss of motion including 70 degrees of abduction and 15 degrees of rotation as well as weakness of his right shoulder due to an

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<sup>2</sup> A.M.A., *Guides* (3rd. ed. rev., 1990).

<sup>3</sup> A. *George Lampo*, 45 ECAB 441, 443 (1994).

<sup>4</sup> Dr. Bell did not provide citations to specific charts or tables of the A.M.A., *Guides* but instead provided page references for the section regarding impairment of the upper extremity.

<sup>5</sup> A.M.A., *Guides*, 48, Table 11.

<sup>6</sup> *Id.* at 54, Table 15.

<sup>7</sup> *Id.* at 41, Figure 35.

<sup>8</sup> *Id.* at 41.

<sup>9</sup> *Id.* at 46.

<sup>10</sup> *Id.* at 322.

impaction fracture. He provided an impairment rating of 10 percent. The Office medical adviser found that appellant had 33 percent impairment of his right shoulder due to weakness. He stated that an obvious weakness in the shoulder in his opinion was 33 percent or Grade 3.<sup>11</sup> He then determined that the nerve affected was the axillary nerve with an maximum impairment rating of 35 percent.<sup>12</sup> The Office medical adviser concluded that appellant had 12 percent impairment due to loss of strength of his right shoulder.

Dr. Bell stated that appellant had an injury to his radial nerve in the right arm and had residual numbness in the distribution of the radial nerve. He concluded that this is a five percent permanent impairment of appellant's upper extremity. The radial nerve has a maximum impairment of five percent due to sensory deficit or pain. Dr. Bell's report does not indicate that he applied the grading scheme of the A.M.A., *Guides* to determine the degree of impairment due to appellant's residual numbness, furthermore, his reports do not describe in detail the extent of appellant's sensory deficit or pain.

The Office medical adviser applied the A.M.A., *Guides* to the range of motion figures provided by Dr. Bell. He found that abduction of 70 degrees was a 5 percent impairment<sup>13</sup> and that external rotation of 15 degrees was a 2 percent impairment.<sup>14</sup> The Office medical adviser added the range of motion figures to reach 7 and combined this with appellant's loss of strength finding appellant had 18 percent permanent impairment of the right upper extremity.<sup>15</sup> The Office medical adviser did not address appellant's residual numbness of the radial nerve.<sup>16</sup>

In regard to appellant's left lower extremity, Dr. Bell listed appellant's range of motion in his knee as 10 to 90 degrees. He stated appellant had 2¼ inches shortening of the femur and that appellant had x-ray evidence of degenerative arthritis. Dr. Bell also indicated that appellant's left calf was substantially smaller than his right. The Office medical adviser properly found that shortening of the extremity was a 20 percent impairment.<sup>17</sup> He correctly found that appellant experienced flexion contracture of 10 degrees which is a 20 percent impairment<sup>18</sup> and

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<sup>11</sup> *Id.* at 49, Table 12.

<sup>12</sup> *Id.* at 54, Table 15.

<sup>13</sup> *Id.* at 45, figure 44.

<sup>14</sup> *Id.*

<sup>15</sup> The Office medical adviser explained that the medical evidence indicated that the reduced motion of the shoulder was not due to muscle weakness.

<sup>16</sup> Dr. Bell also provided an impairment rating for appellant's right lower extremity. However, the Office has not accepted that appellant sustained an injury to his right lower extremity and he is, therefore, not entitled to a schedule award due to permanent impairment of this limb. Furthermore, Dr. Bell provided an impairment rating for appellant's back. The back is not a scheduled member under the Act and appellant is not entitled to any compensation for any loss of range of motion or pain in his back; *see* 5 U.S.C. § 8101(c).

<sup>17</sup> A.M.A., *Guides*, 75, Table 35.

<sup>18</sup> *Id.* at 78, Table 40.

that appellant's loss of range of motion was a 10 percent impairment.<sup>19</sup> However, the Office medical adviser failed to consider whether appellant was entitled to an additional impairment rating for leg muscle atrophy or for arthritis.<sup>20</sup>

Dr. Bell's reports indicated that appellant demonstrated loss of extension and supination of his left upper extremity beyond that allotted by the Office medical adviser. He also supplied evidence in support of left leg muscle atrophy, left leg arthritis, loss of range of motion for flexion in appellant's left upper extremity and residual numbness from the radial nerve in his right upper extremity. The Office medical adviser did not address any impairment due to these conditions in reaching his conclusions. Therefore, on remand, the Office should request a supplemental report from Dr. Bell<sup>21</sup> and recalculate appellant's schedule award.

The decision of the Office of Workers' Compensation Programs dated October 25, 1995 is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.  
March 12, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 77, Table 37.

<sup>21</sup> The Board notes that the Act does not provide for impairment to the whole person, only to the specified scheduled members; *see* 5 U.S.C. § 8107.