

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES A. SCIULLI and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

*Docket No. 98-141; Submitted on the Record;
Issued July 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has greater than a 21 percent permanent impairment of the right arm, for which he received a schedule award.

On May 22, 1997 Dr. H. Andrew Wissinger examined appellant to evaluate the extent of the permanent impairment related to his February 9, 1995 employment injury. He found that the right supraspinatus, infraspinatus and deltoid were all atrophied. Dr. Wissinger noted that the deltoid fasciculated with active flexion of the right shoulder. He reported no winging of the scapula. The right shoulder actively flexed to 90 degrees, extended to 60 degrees, abducted to 70 degrees, adducted to 40 degrees, externally rotated to 0 degrees and internally rotated to 90 degrees. Dr. Wissinger reported no neurological deficit, instability or evidence of arthritis in the right shoulder. He determined that appellant had a 13 percent permanent impairment of the extremity.

An Office of Workers' Compensation Programs' medical adviser compared Dr. Wissinger's clinical findings to the criteria of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), and determined that appellant had a 21 percent permanent impairment of the right upper extremity.

In a schedule award dated July 8, 1997, the Office found that appellant had a 21 percent permanent impairment of the right arm.

The Board finds that the medical evidence of record supports that appellant has greater than a 21 percent permanent impairment of the right arm.

Section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations² authorize the payment of schedule awards for the loss or permanent impairment of specified members, functions or organs of the body. But neither the Act nor the regulations specify how the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the standard for determining the percentage of impairment and the Board has concurred in such adoption.³

Figure 38, page 43 of the A.M.A., *Guides* shows that shoulder flexion of 90 degrees represents a 6 percent impairment of the upper extremity, while extension of 60 degrees represents no impairment. Figure 41, page 44, shows that abduction of 70 degrees represents a 5 percent permanent impairment, while adduction of 40 degrees represents no impairment. Figure 44, page 45, shows that internal rotation of 0 degrees represents a 5 percent impairment,⁴ while external rotation of 90 degrees represents no impairment. Total impairment for loss of range of motion is therefore 16 percent.

As the Office medical adviser reported, atrophy of the deltoid muscle involves the axillary nerve, whose maximum impairment value due to motor deficits is 35 percent, according to Table 15, page 54. Using the procedure set forth in Table 12, page 49 and grading the motor function as "active movement against gravity with some resistance," representing a 25 percent motor deficit, impairment of the upper extremity due to loss of power and motor deficits is 35 percent times 25 percent, or 9 percent.

The Office medical adviser made no rating for atrophy of the supraspinatus and infraspinatus muscles. Nor did the Office medical adviser indicate which nerve or nerves innervate the foregoing muscles. The Office medical adviser simply indicated, "no sensory impairment atrophy of supraspinatus [and] infraspinatus muscles[,] not on Table 15[,] 0 percent" without any rationale for not assigning an impairment percentage.

The clinical findings reported by Dr. Wissinger were not all considered correctly by the Office medical adviser in determining the permanent impairment of the right upper extremity under the A.M.A., *Guides*. The Board therefore finds that the case must be remanded to the Office for referral to a different Office medical adviser to review Dr. Wissinger's clinical findings, assign appropriate impairment percentages and give rationale for not assigning an impairment percentage for atrophy of the supraspinatus and infraspinatus muscles if no percentage of impairment is assigned.

The July 8, 1997 decision is set aside and the case remanded for further action consistent with this opinion and an appropriate schedule award.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ See, e.g., *Leisa D. Vassar*, 40 ECAB 1287 (1989).

⁴ The Office medical adviser apparently mistakenly took his finding of two percent for internal rotation from the impairment values for external rotation.

Dated, Washington, D.C.
July 22, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member