

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NOGA F. BECKER and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, Mo.

*Docket No. 97-1773; Submitted on the Record;
Issued May 18, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI:

The issue is whether appellant has more than a 10 percent permanent impairment of the left upper extremity, for which she received a schedule award.

On February 11, 1994 appellant, then a 57-year-old mail clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an injury to her left shoulder and neck as a result of her employment. Appellant indicated she was first aware of her injury in January 1993. On May 11, 1994 the Office of Workers' Compensation Programs initially accepted appellant's claim for left subdeltoid bursitis and she continued working in a modified position. Approximately ten months later, appellant obtained a second opinion, which resulted in a diagnosis of chronic impingement syndrome with a possible rotator cuff tear. The Office authorized surgery for appellant's condition and on April 27, 1995, Dr. Lawrence A. Kriegshauser, a Board-certified orthopedic surgeon, performed a diagnostic arthroscopy followed by open acromioplasty and a rotator cuff repair of the left shoulder. On June 27, 1995 the Office accepted appellant's condition for left subdeltoid bursitis, impingement and arthroscopy and she received compensation for wage loss for the period April 27 through July 21, 1995. Appellant returned to work on July 22, 1995 in a limited-duty capacity.¹

On January 9, 1996 appellant filed a claim (Form CA-7) for a schedule award under the Federal Employees' Compensation Act. The Office subsequently referred appellant for an examination with Dr. Donald M. McPhaul, Board-certified in physical medicine and rehabilitation. He examined appellant on May 15, 1996 and in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993), he concluded that appellant had a 10 percent impairment of the left upper extremity due to impingement syndrome and a rotator cuff tear, surgically treated. Additionally, Dr. McPhaul identified July 21, 1995 as the date of maximum medical improvement. On June 9, 1996 an

¹ Appellant continued to work in this capacity until she retired on March 9, 1996.

Office medical adviser reviewed his report and concurred with Dr. McPhaul's findings. By decision dated June 26, 1996, the Office granted appellant a schedule award for a 10 percent permanent impairment of her left upper extremity. The award covered a period of 31.2 weeks from August 1, 1995 to March 6, 1996.

Appellant subsequently requested an examination of the written record by an Office hearing representative. Appellant argued that since her injury dated back to January 1993, she should receive benefits from that date forward, rather than August 1, 1995. In a decision dated April 14, 1997 and finalized on April 15, 1997, the hearing representative affirmed the Office's June 26, 1996 decision awarding appellant a 10 percent permanent impairment of her left upper extremity. The hearing representative concluded that Dr. McPhaul's May 15, 1996 opinion constituted the weight of the medical evidence. Appellant filed a timely appeal with the Board on April 29, 1997.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet her burden of proof to establish that she has more than a 10 percent permanent impairment of her left upper extremity.

Section 8107 of the Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.³

In the instant case, Dr. McPhaul provided the only medical opinion that included a rating of appellant's impairment under the A.M.A., *Guides* (fourth edition 1993).⁴ He calculated a 4 percent impairment due to abnormal motion of the left shoulder utilizing figures 38, 41 and 44 at pages 43 through 45 of the A.M.A., *Guides*. Additionally, Dr. McPhaul calculated a 3 percent impairment due to shoulder pain utilizing Tables 11 and 15 of the A.M.A., *Guides* at pages 48 and 54, respectively. Finally, he calculated a 4 percent impairment due to shoulder girdle weakness based on Table 12 at page 49 and Table 15 and found no documented evidence of impairment due to vascular disorders. Dr. McPhaul reached his conclusion of a 10 percent impairment of the left upper extremity by combining the above-noted impairments due to

² 5 U.S.C. § 8107.

³ *James J. Hjort*, 45 ECAB 595 (1994).

⁴ Although appellant's physical therapist provided measurements as recently as July 14, 1995 regarding appellant's range of motion and manual muscle testing appellant's treating physician, Dr. Kriegshauser, did not provide a specific impairment rating of appellant's left shoulder condition. In his most recent report, dated October 16, 1995, Dr. Kriegshauser noted that appellant had "pretty good motion of the shoulder with the exception of internal rotation and she can only touch her lumbar spine with her thumb on internal rotation." Inasmuch as Dr. Kriegshauser did not provide an impairment rating utilizing the A.M.A., *Guides* (fourth edition 1993), his opinion is of little probative value in determining the extent of appellant's permanent impairment; see *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

abnormal motion, pain and weakness. However, his combined impairment rating of 10 percent is not in accordance with the Combined Values Chart at page 32.2 of the A.M.A., *Guides*. Pursuant to the A.M.A., *Guides*, the combined value of appellant's 4 percent impairment for abnormal motion, 3 percent impairment for pain and 4 percent impairment due to weakness is 11 percent, rather than the 10 percent rating provided by Dr. McPhaul. Notwithstanding this error, his calculation of the percentage of impairment of appellant's left upper extremity sufficiently conforms to the A.M.A., *Guides* (fourth edition 1993) and, therefore, constitutes the weight of the medical evidence.⁵ Accordingly, the Office's decision will be modified to reflect an 11 percent impairment rating of the left upper extremity inasmuch. Appellant has failed to provide any probative medical evidence that she has greater than an 11 percent impairment.⁶

The decision of the Office of Workers' Compensation Programs dated April 14, 1997 and finalized on April 15, 1997, is hereby modified to reflect an award for an 11 percent impairment of appellant's left upper extremity.

Dated, Washington, D.C.
May 18, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁶ The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 31.2 weeks' compensation. 5 U.S.C. § 8107(c)(1). In the instant case, appellant does not have a total, or 100 percent loss of use of her left arm, but rather an 11 percent loss. As such, appellant is entitled to 11 percent of the 31.2 weeks of compensation, which is 34.2 weeks. While appellant's injury may have initially manifested itself in January 1993, this is not a factor in determining the extent of her impairment, and thus, the number of weeks of compensation she is entitled to under the Act.