

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONCEPCION J. PEREZ and U.S. POSTAL SERVICE,
POST OFFICE, Stockton, CA

*Docket No. 98-2116; Submitted on the Record;
Issued February 24, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a 10 percent loss of use of the right arm for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for right elbow tendinitis with ulnar nerve release.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 10 percent loss of use of the right arm.

On March 27, 1998 appellant's treating physician, Dr. Mark T. Hellner, a Board-certified orthopedic surgeon, completed a form provided by the Office documenting the degree of appellant's impairment to his elbow. Dr. Hellner indicated that appellant had mild occasional pain, had flexion of 125/150 degrees (reflecting affected vs. opposite side), extension of 25/0 degrees, forearm pronation of 50/80 degrees and supination of 50/80 degrees. He indicated that appellant had mild, occasional pain in his elbow and grip strength of 25 percent. Dr. Hellner supported these findings with his narrative report dated February 4, 1998.

In the district medical adviser's report dated May 21, 1998, the district medical adviser used the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition, 1994), to determine that, using Figure 32, page 40, the loss of extension of the elbow was 3 percent and the loss of flexion was 2 percent and using Figure 35, page 41, the loss of supination was 1 percent and the loss of pronation was 2 percent. The district medical adviser, therefore, concluded that appellant had a total impairment due to loss of range of motion of 8 percent. Using Table 11, page 48, she determined that appellant's impairment due to sensory deficit or pain was 25 percent based on the level of symptoms as grade 2. Using Table 15, page 54, the district medical adviser determined that appellant's maximum impairment was 2 percent obtained by multiplying 7 percent by .25 percent. She, therefore, found that appellant's

total impairment for the right upper extremity was 10 percent. The district medical adviser determined that appellant reached maximum medical improvement on February 4, 1998.

By decision dated June 3, 1998, the Office granted appellant an award for a 10 percent loss of use of the right arm.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies 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 does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² 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.³

In the present case, the district medical adviser applied the A.M.A., *Guides* (fourth edition, 1994) to the figures Dr. Hellner used in his March 27, 1998 form showing flexion of 125/150 degrees, extension of 25/0 degrees, forearm pronation and supination of 50/80 degrees and grip strength of 25 percent to determine that appellant had a total impairment of the right upper extremity of 10 percent. Specifically, using Figure 32, page 40, she found that appellant's 25/0 degree extension resulted in a 3 percent impairment and his 125/150 degree flexion resulted in a 2 percent impairment. Using Figure 35, page 41, the district medical adviser found that appellant's 50/80 degree supination and pronation resulted in a 1 percent and a 2 percent impairment, respectively. She, therefore, found that appellant's total impairment due to loss of range of motion was 8 percent. Using Table 11, page 48, the district medical adviser determined that appellant's level of symptoms was grade 2 which equated to a 25 percent impairment due to sensory deficit or pain. Using Table 15, page 54, she determined that appellant's maximum impairment based on the ulnar nerve was 7 percent and multiplying .25 percent by 7 percent, she obtained an impairment due to sensory deficit or pain totaling 2 percent. The district medical adviser, therefore, concluded that appellant's total impairment for the right upper extremity was 10 percent. Her calculations and conclusions were properly made pursuant to the A.M.A., *Guides* (fourth edition, 1994). Appellant has not presented any evidence to show that his impairment to his right upper extremity is greater than 10 percent.

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Daniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

The decision of the Office of Workers' Compensation Programs dated June 3, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 24, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member