

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOBBY C. POE and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

*Docket No. 98-2282; Submitted on the Record;
Issued February 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has more than a six percent permanent impairment of his right elbow for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than a six percent permanent impairment of his right elbow for which he received a schedule award.

Appellant, a letter carrier, filed a claim on February 1, 1995 alleging on January 30, 1995 he injured his right elbow in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for right elbow contusion and authorized surgery. Appellant requested a schedule award. The Office denied appellant's request for a schedule award by decision dated April 16, 1998. The Office then undertook further development of the medical evidence. By decision dated June 25, 1998, the Office granted appellant a schedule award for a six percent permanent impairment of his right elbow.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the American Medical

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

Association, *Guides to the Evaluation of Permanent Impairment*³ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

Appellant's attending physician, Dr. Pierre Le Baud, a Board-certified orthopedic surgeon, opined that appellant had reached maximum medical improvement on January 19, 1996 and that he had two percent impairment of his right arm due to his elbow. The Office referred appellant for a second opinion evaluation with Dr. Robert Simpson, a Board-certified orthopedic surgeon, on May 3, 1998. In his May 15, 1998 report, Dr. Simpson properly found that appellant had 120 degrees of flexion for 2 percent impairment.⁵ He then found that appellant retained 60 degrees of pronation for 1 percent impairment and 50 degrees of supination for 1 percent impairment.⁶ He found that appellant had two percent impairment due to joint crepitation on a mild basis.⁷ Dr. Simpson also included an impairment rating of two percent for joint swelling on a mild basis. However, the Office medical adviser properly noted that as appellant had loss of range of motion, *i.e.*, flexion, pronation and supination, he was not entitled to the impairment rating for joint swelling.⁸

Therefore, the medical evidence interpreted with the A.M.A., *Guides* establishes that appellant has a six percent permanent impairment of his right elbow.

³ A.M.A., *Guides*, 4th ed. (1993).

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ A.M.A., *Guides* at 40, Figure 32.

⁶ A.M.A., *Guides* at 41, Figure 35.

⁷ A.M.A., *Guides* at 59, Table 19.

⁸ Impairment due to this condition usually is estimated through loss of motion. Table 20 is used to estimate impairment only when there is full range of motion of the joint. A.M.A., *Guides*, 59.

The decision of the Office of Workers' Compensation Programs dated June 25, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member