

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID S. KRUPNICK and DEPARTMENT OF THE TREASURY,
CUSTOMS SERVICE, Philadelphia, PA

*Docket No. 01-586; Submitted on the Record;
Issued November 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 22 percent impairment of the left upper extremity for which he received schedule awards.

The Board has duly reviewed the case record and appellant's contentions on appeal and concludes that appellant has no greater than a 22 percent impairment of the left upper extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 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 under the law for 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. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ has been adopted by the Office of Workers' Compensation Programs and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides* (4th ed. 1993).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

On December 12, 1997 appellant, then a 34-year-old senior special agent, sustained an employment-related gunshot wound to the hand. He stopped work that day and returned on June 15, 1998. On August 1, 1999 appellant filed a claim for a schedule award and submitted a report from Dr. Ronald J. Potash, a Board-certified surgeon. In a decision dated January 28, 2000, appellant was granted a schedule award for a 24 percent impairment of the left hand, for a total of 409.92 days of compensation, to run from June 21, 1999 to August 4, 2000.⁵ The Office based its decision on the October 6, 1999 opinion of the Office medical adviser who applied the standards of the A.M.A., *Guides* to Dr. Potash's findings.

Appellant, through counsel, timely requested a hearing that was held on June 27, 2000. By decision dated August 21, 2000, an Office hearing representative modified the January 28, 2000 decision to reflect that appellant was entitled to a schedule award for a 22 percent impairment of the left upper extremity. On November 13, 2000 appellant was granted an award for an additional 70.56 days, to run from August 5 to October 14, 2000. The instant appeal follows.

The relevant medical evidence⁶ in this case includes a June 21, 1999 report in which Dr. Potash evaluated appellant and concluded that, under the A.M.A., *Guides*, he had a 47 percent impairment of the left upper extremity. By report dated October 6, 1999, an Office medical adviser reviewed Dr. Potash's findings and concluded that, under the A.M.A., *Guides*, appellant had a 24 percent permanent impairment of the left hand. Following the hearing representative's August 21, 2000 decision, Dr. Neven A. Popovic, a Board-certified orthopedic surgeon who serves as an Office medical consultant, reviewed Dr. Potash's findings and concluded that, under Tables 1 and 2 of the A.M.A., *Guides*, appellant had a 22 percent permanent impairment of the left upper extremity.⁷

Contrary to appellant's contention on appeal that a conflict in medical evidence exists between the opinions of Dr. Potash and the Office medical advisers, the Board finds that, whereas Dr. Potash did not follow the instructions found in the A.M.A., *Guides*, the Office medical advisers correctly applied the relevant standards of the A.M.A., *Guides* to Dr. Potash's findings in order to determine that appellant had a 22 percent permanent impairment of his left upper extremity. Specifically, the A.M.A., *Guides* indicate that, utilizing the Combined Values Chart,⁸ impairment values for abnormal motion of more than one finger joint should be combined, as should impairment values for abnormal motion and sensory loss.⁹ Dr. Potash

⁵ The award contains a typographical error indicating that the award was to run for 409.92 weeks rather than 409.92 days.

⁶ Appellant also submitted reports in which Dr. Jerome Miller, an osteopathic physician, and Dr. Scott H. Kozin, appellant's treating Board-certified orthopedic surgeon, acknowledged reading and reviewing Dr. Potash's report and agreeing with his conclusion.

⁷ Table 1 converts impairment of the digits to impairment of the hand, and Table 2 converts impairment of the hand to impairment of the upper extremity. A.M.A., *Guides*, *supra* note 3 at 18 and 19.

⁸ A.M.A., *Guides*, *supra* note 3 at 322-24.

⁹ *Id.* at section 3.1f at 34-35. The A.M.A., *Guides* further indicate that joint thumb impairments and abnormal motions should be added. *Id.* at 27, 29.

added these values. The A.M.A., *Guides* further emphasize that grip strength is to be used “only when the other criteria have not adequately encompassed the extent of the impairment” and indicates that three measurements should be done in determining strength measurements.¹⁰ Dr. Potash provided only one measurement and did not sufficiently explain why other criteria did not adequately encompass the impairment.

In rating the impairment to appellant’s hand, an Office medical adviser properly utilized Figures 19, 21 and 23 and Table 9¹¹ to determine that appellant had an 18 percent impairment of the index finger, a 48 percent impairment of the middle finger, a 50 percent impairment of the ring finger, and a 26 percent impairment of the little finger. He utilized Figures 10 and 13 and Table 5¹² to determine that appellant had a 6 percent impairment of his left thumb. The Office medical adviser then noted that, although Dr. Potash determined that appellant had a 30 percent impairment due to loss of grip strength, the A.M.A., *Guides* indicate that strength measurements are to be used only in rare occasions when an impairment could not be otherwise considered adequately and Dr. Potash had provided only one measurement.¹³ In a September 7, 2000 report, Dr. Popovic properly utilized Tables 1 and 2¹⁴ to determine appellant’s hand impairment and the relationship of his hand impairment to the upper extremity.¹⁵

It is appellant’s burden to submit sufficient evidence to establish his claim.¹⁶ While Dr. Potash indicated that appellant had a 47 percent left upper extremity impairment, he did not properly follow the instructions contained in the A.M.A., *Guides* to reach this conclusion. The weight of the medical opinion evidence establish that appellant has no greater than a 22 percent left upper extremity impairment. The Board therefore finds that the Office medical advisers correctly applied the relevant standards of the A.M.A., *Guides* to Dr. Potash’s findings in order to determine that appellant had a 22 percent permanent impairment of his left upper extremity.

¹⁰ *Id.* at 58, 64.

¹¹ *Id.* at 31, 32, 34.

¹² *Id.* at 26-28.

¹³ *Id.* at 58, 64.

¹⁴ *Id.* at 18-19.

¹⁵ Where residuals of an injury to a member of the body specified in the schedule award provisions of the Act extend into an adjoining area of a member also enumerated in the schedule, such as an injury of the finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage of loss of use of the larger member. See *Walter R. Malena*, 46 ECAB 983 (1995).

¹⁶ See *Annette M. Dent*, 44 ECAB 403 (1993).

The decisions of the Office of Workers' Compensation Programs dated November 13 and September 21, 2000 are hereby affirmed.

Dated, Washington, DC
November 27, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member