

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH LAWRENCE, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MA

*Docket No. 01-1361; Submitted on the Record;
Issued February 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a one percent permanent impairment of the right arm.

On September 15, 1997 appellant, then a 46-year-old vehicle mechanic, was fixing a flat tire when the air wrench came off the lug nut and hit him in the right elbow. The Office of Workers' Compensation Programs accepted appellant's claim for medial epicondylitis of the right elbow. In December 1998, appellant underwent surgery for a debridement of the right elbow. The Office paid temporary total disability compensation for the periods appellant did not work.

On June 21, 1999 appellant filed a claim for a schedule award. By letter dated July 29, 1999, the Office requested Dr. Sumner Karas, appellant's treating physician, to determine the extent of permanent partial impairment to appellant's right elbow. He was advised that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) was the standard for impairment rating purposes and enclosed a Form CA-1303-04 for Dr. Karas to provide the appropriate information which would be used to determine eligibility for a schedule award.

In an August 20, 1999 treatment note and on Form CA-1303-04, Dr. Karas provided the results of his examination, noting that appellant had a well-healed 2¾ inch scar. He stated that the date of his examination was the date of maximum medical improvement. Dr. Karas noted that the degree of retained active flexion was 130 degrees; the degree of retained active extension was 0; the degree of retained pronation from neutral was 90 degrees; the degree of retained supination from neutral was 70 degrees; and advised that pain or loss of strength was estimated at 5 percent. No ankylosis was mentioned. Dr. Karas recommended an impairment rating of five percent of the right upper extremity, which was noted to be a reflection of some residual weakness and discomfort that was typically associated with the surgery. Restrictions on lifting objects greater than 30 pounds and no prolonged forceful grasping was provided.

On March 8, 2001 the Office requested that its medical adviser review the record for a schedule award. On March 12, 2001 the Office medical adviser stated that the August 20, 1999 examination revealed that appellant's elbow had improved causing problems only during heavy lifting or forceful grasping. Examination revealed full extension to 0 degrees and flexion to 130 degrees. Pronation was 90 degrees with supination to 70 degrees. Residual weakness was mentioned, but not quantitated. Under the A.M.A., *Guides* (5th ed. 2000), 130 degrees of flexion provides a 1 percent upper extremity impairment. The medical adviser noted that if there was further impairment, either the pinch or grasp strength declines had to be measured and documented.

In a March 22, 2001 decision, the Office issued a schedule award for a one percent permanent impairment of the right arm.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses. Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards.³

In this case, the Office medical adviser properly rated appellant's impairment under the A.M.A., *Guides*. In his March 12, 2001 report, he relied upon Dr. Karas's clinical findings but recommended a one percent permanent right upper extremity impairment rating due to loss of flexion as calculated under Figure 16-34. Under Figure 16-40, appellant's measurements for pronation and supination do not create a measureable impairment and, thus, the Office medical adviser did not equate any impairment value to these figures. The Office medical adviser properly noted that although residual weakness was mentioned, no value was attributed so an impairment rating could be rendered. The Board notes that the Office medical adviser properly relied upon the fifth edition of the A.M.A., *Guides* as Office procedures direct the use of the fifth edition for schedule awards determined on and after February 1, 2001.⁴

On appeal appellant argued that he should be compensated for having to live with his 2¾ inch scar which resulted from his surgery. Section 8107(c)(21) of the Act⁵ provides that "For serious disfigurement of the face, head or neck of a character likely to handicap an individual in

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁴ *Id.*

⁵ 5 U.S.C. § 8107(c)(21).

securing or maintaining employment, proper and equitable compensation not to exceed \$3,500.00 shall be awarded.”

As appellant’s work-related surgical scar is not on his face, head or neck area, the Office medical adviser properly determined that no impairment rating could be rendered.

The Board finds that the Office medical adviser’s calculation is correct and that appellant has not established that he is entitled to a schedule award for more than a one percent impairment of the right upper extremity.

The decision of the Office of Workers’ Compensation Programs dated March 22, 2001 is hereby affirmed.

Dated, Washington, DC
February 4, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member