

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MANUEL R. ARCHULETA and DEPARTMENT OF THE AIR FORCE,
OGDEN AIR LOGISTICS CENTER, HILL AIR FORCE BASE, UT

*Docket No. 02-137; Submitted on the Record;
Issued May 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent permanent impairment of the left and right upper extremities, for which he received a schedule award.

On June 7, 2000 appellant, a 45-year-old aircraft sheet metal mechanic, filed an occupational disease claim alleging that he sustained an employment-related injury to both his left and right hands. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral ulnar nerve lesion (cubital tunnel syndrome). Additionally, the Office authorized bilateral cubital tunnel release, which appellant underwent on September 7 and November 2, 2000. Appellant received appropriate wage-loss compensation and he returned to his full duties on January 2, 2001.

On September 17, 2001 the Office granted appellant a schedule award for a two percent permanent impairment of both his left and right upper extremities. The award covered a period of 12.48 weeks.

The Board finds that appellant failed to establish that he has more than a two percent permanent impairment of the left and right upper extremities.

Section 8107 of the Federal Employees' Compensation Act¹ 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 Act's implementing regulation has adopted the American

¹ 5 U.S.C. § 8107.

Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.²

The September 17, 2001 schedule award for permanent impairment of appellant's left and right upper extremities was based on the September 6, 2001 report of the Office medical adviser, who reviewed the relevant medical evidence, including the March 28 and July 30, 2001 reports from appellant's treating physician, Dr. Norman C. Bos II, a Board-certified orthopedic surgeon.

On March 28, 2001 Dr. Bos submitted an impairment rating under the A.M.A., *Guides* (4th ed. 1993). By letter dated July 2, 2001, the Office requested that Dr. Bos provide an impairment rating under the A.M.A., *Guides* (5th ed. 2001).³ In a report dated July 30, 2001, Dr. Bos stated that appellant had a 2 percent permanent impairment in both his left and right upper extremities in accordance with Tables 16-10 and 16-15 of the A.M.A., *Guides* (5th ed. 2001). The Office medical adviser concurred with Dr. Bos' impairment rating.

Under Table 16-10 at page 482 of the A.M.A., *Guides*, Dr. Bos classified appellant's sensory deficit as Grade 4, which represents a maximum percentage sensory deficit of 25 percent. This determination was made with respect to both upper extremities. Pursuant to Table 16-15 at page 492 of the A.M.A., *Guides*, the maximum percentage upper extremity impairment due to sensory deficit involving the ulnar nerve is seven percent. To determine the impairment of the upper extremity due to sensory deficit you multiply the maximum upper extremity impairment for sensory deficit of the ulnar nerve (7 percent) by the severity of sensory deficit (25 percent). This calculation results in a percentage impairment of 1.75, which the Office medical adviser properly rounded up to 2 percent.

Inasmuch as the Office medical adviser's calculation of appellant's left and right upper extremity impairments conforms to the A.M.A., *Guides* (5th ed. 2001), his finding constitutes the weight of the medical evidence.⁴ Accordingly, appellant has failed to provide any probative medical evidence that he has greater than a two percent impairment of the left and right upper extremities.⁵

² 20 C.F.R. § 10.404 (1999).

³ On January 29, 2001 the Office announced that effective February 1, 2001, schedule awards would be determined in accordance with the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (Jan. 29, 2001). This action was in accordance with the authority granted the Office under 20 C.F.R. § 10.404 (1999).

⁴ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁵ The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of 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 his arms, but rather a 2 percent loss in each arm. As such, appellant is entitled to 4 percent of the 312 weeks of compensation, which is 12.48 weeks.

The September 17, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 6, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member