

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONALD A. DePAUL and DEPARTMENT OF JUSTICE,  
BUREAU OF PRISONS, Chicago, IL

*Docket No. 03-376; Submitted on the Record;  
Issued February 27, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 19 percent permanent impairment of the left upper extremity, for which he received a schedule award.

On October 12, 2001 appellant, a 40-year-old correctional officer, sustained a traumatic injury to his left arm while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left ruptured biceps tendon. Additionally, the Office authorized surgery, which appellant underwent on January 25, 2002. Appellant received appropriate wage-loss compensation and he returned to limited-duty work on February 14, 2002.

On August 23, 2002 the Office granted appellant a schedule award for a 19 percent permanent impairment of the left upper extremity. The award covered a period of 59.28 weeks.

The Board finds that appellant failed to establish that he has more than a 19 percent permanent impairment of the left upper extremity.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> 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 implementing regulations have adopted the American Medical

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<sup>1</sup> 5 U.S.C. § 8107.

Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>2</sup>

The August 23, 2002 schedule award for permanent impairment of appellant's left upper extremity was based on the Office medical adviser's August 10, 2002 report. The Office medical adviser reviewed the relevant medical evidence, including a June 25, 2002 functional capacity evaluation and a July 12, 2002 report from Dr. John M. Deveris, appellant's orthopedic surgeon, who found that appellant had a seven percent permanent impairment of the left upper extremity based on loss of strength in appellant's biceps. However, Dr. Deveris did not clearly delineate how he obtained his impairment rating under the 5<sup>th</sup> edition of the A.M.A., *Guides* (2001). As Dr. Deveris did not specifically correlate his findings with the A.M.A., *Guides*, his July 12, 2002 impairment rating is insufficient to establish the extent of appellant's permanent impairment.<sup>3</sup>

The Office medical adviser calculated a four percent permanent impairment due to loss of range of motion in the left elbow and forearm.<sup>4</sup> The four percent impairment rating due to abnormal elbow motion is in accordance with Figures 16-34 and 16-37 at pages 472 and 474 of the A.M.A., *Guides*. Under Table 16-10 at page 482 of the A.M.A., *Guides*, the Office medical adviser classified appellant's impairment due to pain resulting from peripheral nerve disorders as Grade 3, which allows for a maximum sensory deficit of 60 percent. 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 medial brachial and medial antebrachial cutaneous nerve is five percent. To determine the impairment of the upper extremity due to sensory deficit one must multiply the maximum upper extremity impairment for sensory deficit of the involved nerve (5 percent) by the severity of sensory deficit (60 percent). This calculation results in a three percent impairment of both the medial brachial and medial antebrachial cutaneous nerve.<sup>5</sup> Lastly, in accordance with Table 16-35 at page 510 of the A.M.A., *Guides*, appellant received a five percent impairment for weakness due to loss of flexion and a four percent impairment for weakness due to loss of supination. Using the Combined Values Chart at page 604 of the A.M.A., *Guides*, appellant's combined left upper extremity impairment equals 19 percent.

Inasmuch as the Office medical adviser's calculation of appellant's left upper extremity impairment conforms to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), his finding constitutes the weight of

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<sup>2</sup> 20 C.F.R. § 10.404 (1999). 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*, 5<sup>th</sup> edition (2001). FECA Bulletin No. 01-05 (January 29, 2001). This action was in accordance with the authority granted the Office under 20 C.F.R. § 10.404 (1999).

<sup>3</sup> *Lela M. Shaw*, 51 ECAB 372 (2000).

<sup>4</sup> The measurements for flexion, extension and pronation were obtained from appellant's June 25, 2002 functional capacity evaluation.

<sup>5</sup> The Office medical adviser identified impairment involving the "lateral" antebrachial cutaneous nerve. The A.M.A., *Guides*, however, reference the medial antebrachial cutaneous and medial brachial cutaneous nerve at Table 16-15.

the medical evidence.<sup>6</sup> Accordingly, appellant has failed to provide any probative medical evidence that he has greater than a 19 percent permanent impairment of the left upper extremity.<sup>7</sup>

The August 23, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 27, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>6</sup> See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

<sup>7</sup> 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 19 percent loss in his left arm. As such, appellant is entitled to 59.28 weeks of compensation.