

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTOPHER L. GRIFFITHS and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION, McAllen, TX

*Docket No. 03-1788; Submitted on the Record;
Issued September 25, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On June 11, 2001 appellant, a 31-year-old border patrol agent, sustained a traumatic injury to his left shoulder while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for a left rotator cuff tear. Additionally, the Office authorized surgery, which appellant underwent on January 22, 2002. Appellant received appropriate wage-loss compensation and he returned to full-duty work on August 7, 2002.

On April 9, 2003 the Office granted appellant a schedule award for a nine percent permanent impairment of the left upper extremity. The award covered a period of 28.08 weeks.

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

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

¹ 5 U. S. C. § 8107.

² 20 C.F.R. § 10.404 (1999); *see* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and 4 (June 2003).

The April 9, 2003 schedule award for permanent impairment of appellant's left upper extremity was based on the Office medical adviser's January 9, 2003 report. The Office medical adviser reviewed the relevant medical evidence, including an August 7, 2002 report from Dr. S. Gopal Krishnan, appellant's Board-certified orthopedic surgeon, who found that appellant had an eight percent impairment of the shoulder based on range of motion, a five percent impairment of the left upper extremity or a three percent impairment of the whole person. However Dr. Krishnan did not clearly delineate how he obtained his impairment rating under the fifth edition of the A.M.A., *Guides* (2001). As Dr. Krishnan did not specifically correlate his findings with the A.M.A., *Guides*, his August 7, 2002 impairment rating is insufficient to establish the extent of appellant's permanent impairment.³

The Office medical adviser reviewed the measurements for flexion, extension, abduction, adduction, internal and external rotation provided by Dr. Krishnan in his August 7, 2002 report and calculated a nine percent permanent impairment due to loss of range of motion in the left shoulder.⁴ The nine percent impairment rating due to loss of range of motion is in accordance with Figures 16-40, 16-43 and 16-46 at pages 476 through 479 of the A.M.A., *Guides*. Under Figure 16-40 at page 476 of the A.M.A., *Guides*, the Office medical adviser noted that a flexion of 140 degrees equated to a 3 percent impairment and an extension of 40 degrees equated to a 1 percent impairment. Under Figure 16-43 at page 477 of the A.M.A., *Guides*, the Office medical adviser noted that an abduction of 140 degrees equated to a 2 percent impairment and an adduction of 40 degrees equated to 0 or no impairment rating. Under Figure 16-46 at page 478 of the A.M.A., *Guides*, the Office medical adviser noted that an internal rotation of 50 degrees equated to a 2 percent impairment and an external rotation of 40 degrees equated to a 1 percent impairment.

The A.M.A., *Guides* provide that to determine impairment due to abnormal shoulder motion one must add the values contributed by each shoulder motion (flexion and extension, abduction and adduction, internal and external rotation). In this case, the calculation for impairment to the upper extremity due to abnormal shoulder motion equals $(3+1) + (2+0) + (2+1)$ or a 9 percent impairment. As Dr. Krishnan reported that the neurovascular status of the extremity was normal and appellant only had an occasional aching discomfort, there is no other impairments to determine. Accordingly, appellant's left upper extremity impairment equals nine percent.

³ *Lela M. Shaw*, 51 ECAB 372 (2000).

⁴ Dr. Krishnan also advised that overhead elevation equaled 140 degrees. The A.M.A., *Guides*, however, do not provided analysis of this shoulder motion; see section 16.4i. A.M.A., *Guides* at 474.

Inasmuch as the Office medical adviser's calculation of appellant's left upper extremity impairment conforms to the A.M.A., *Guides* (fifth edition 2001), his finding constitutes the weight of the medical evidence.⁵ Accordingly, appellant has failed to provide any probative medical evidence that he has greater than a nine percent permanent impairment of the left upper extremity.⁶

The April 9, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 25, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁶ 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 9 percent loss in his left arm. As such, appellant is entitled to 28.08 weeks of compensation.