U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY N. JOHNSON and DEPARTMENT OF THE AIR FORCE, McCLELLAN AIR FORCE BASE, Sacramento, Calif.

Docket No. 97-2901; Submitted on the Record;
Issued May 1, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to compensation for disability for any period after April 30, 1996; and (2) whether appellant has more than a 14 percent permanent impairment of the right arm.

On September 13, 1982 appellant, then a 36-year-old aircraft sheet metal mechanic, was hit by a car while he was riding on his bicycle on the premises of the employing establishment. In a November 19, 1982 report, Dr. H.D. Cain, an employing establishment physician, related that on September 14, 1982 appellant had slight diffuse tenderness of the neck with negative x-rays. He reported that appellant had diffuse tenderness of the right shoulder and tenderness over the acromioclavicular area where he had a previous resection. Dr. Cain noted that x-rays of the shoulder showed old calcific tendinitis and calcific acromioclavicular joint. He indicated that abrasions around the right elbow were redressed. X-rays showed an old healed fracture but the elbow was not tender and the range of motion was nearly full. Dr. Cain reported abrasions of both knees with a trace effusion of the right knee but no pain on medial collateral ligament stress. Dr. Cain diagnosed multiple contusions with a contusion and strain of the right shoulder and sprain of the right knee with probable tear of the posterior cruciate ligament. In a February 11, 1983 note, Dr. Cain indicated that appellant had continuing right shoulder problems with a restricted range of motion. He noted appellant was tender around the supraspinatous insertion. He diagnosed adhesive capsulitis and supraspinatous tendinitis. In a July 21, 1983 report, Dr. Cain stated that appellant's right shoulder was almost completely pain free and appellant was using the shoulder normally and was working at his regular job. The Office of Workers' Compensation Programs accepted appellant's claim for multiple contusions, right shoulder sprain, and a probable tear of the right posterior cruciate ligament. Appellant received continuation of pay for the period September 14 through October 17, 1982.

On November 5, 1986 appellant filed a claim for inflammation of the rotator cuff of the right shoulder with bursitis and tendinitis. He indicated that on October 9 and 10, 1986 he was operating a Davis nut gun, checking the Davis nuts on aircraft wings. Appellant noted that each

wing had approximately 2,500 Davis nuts. He stated that the work was done by reaching and lifting the nut gun from hole to hole. Appellant indicated that he had done one and a half wings in the two days. He related that on October 10, 1986 his shoulder felt tired and strained but he believed that rest during a three-day weekend would help. Appellant noted, however, that he still had pain in the shoulder when he returned to work so he stopped working on October 14, 1986 and saw his physician on October 15, 1986. In an undated form report, Dr. M.N. Taylor indicated that appellant had reinjured his right shoulder while running a Davis nut gun. He reported appellant had pain on abduction of the right shoulder and limitation in the active range of motion. Dr. Taylor diagnosed tendinitis of the right rotator cuff. Appellant returned to work on October 23, 1986, stopped again on October 30, 1986 and returned again on November 19, 1986. He received continuation of pay for the periods he did not work. The Office accepted appellant's claim for right shoulder tendinitis.

On November 11, 1995 appellant filed a claim for an occupational injury to his right shoulder. He related his condition to his work which included drilling out fasteners and prolonged sanding of large areas. Appellant stated that his work required considerable repetitive motion of his right hand, arm and shoulder. He noted that he had undergone rehabilitative treatment in September 1982, April 1987 and October 1995. Appellant declared that he had worked with pain because his right arm had never completely recovered from 1982. He submitted a copy of an employing establishment report in which he stated that he was sanding the inner skin of an aircraft part he had taken off earlier. Appellant noted that he was working with his right arm fully extended while sanding with his orbital sander with an air hose and vacuum connected to the sander. He noted that he was leaning on his work bench, applying pressure to the sander. His right shoulder then became very weak and painful and gave out on him. Appellant stopped working on November 3, 1995.

In an October 27, 1995 report, Dr. Susan Scholey, a physiatrist, diagnosed right shoulder strain, noting that appellant had limited motion of the shoulder. In a November 6, 1995 office note, Dr. A. James related that appellant had progressive shoulder pain for three months, becoming more severe on October 27, 1995 when he had been sanding for most of the day. He indicated appellant had a reduced range of motion and pain in the right shoulder. In a November 12, 1995 office note, Dr. James indicated that appellant had right shoulder atrophy and reduced range of motion. The Office accepted appellant's claim for right shoulder strain and began payment of temporary total disability compensation effective November 11, 1995.

In a December 11, 1995 report, Dr. Christopher Sweeny, a Board-certified orthopedic surgeon, noted appellant had a history of right knee problems due to injuries sustained in a motor vehicle accident. He commented that appellant sustained a recent work injury which exacerbated his knee pain.[1] Dr. Sweeny also noted that appellant had a history of shoulder injury. He related that appellant had a collar bone fracture as a young man and had surgery on his shoulder to remove calcium deposits. Dr. Sweeny indicated that appellant had intermittent problems for years but in the prior six to eight months had experienced marked discomfort while doing repetitive shoulder movements at work. He reported that appellant's range of motion was quite limited with forward elevation 80 degrees, assisted elevation to 100 degrees with severe

[1] Appellant's right knee condition is not an issue in this appeal.

pain, and severe pain with abduction to 60 to 70 degrees. Dr. Sweeny indicated that x-rays showed calcifications in the soft tissues near the area of previous surgery with a significant large calcification in the rotator cuff area. He noted degenerative changes in the glenohumeral joint with what appeared to be a posterior glenoid osteophyte. Dr. Sweeny stated that appellant was working in a job that was contributing to his knee and shoulder discomfort and recommended that he pursue a change of occupation. He concluded that appellant was disabled from performing the duties of his position of sheet metal worker. A January 4, 1996 arthrogram showed no evidence of a rotator cuff tear, a questionable narrowing of the subacromial space which raised the possibility of impingement, and extensive post-surgical changes of the right clavicle.

In a February 12, 1996 office note, Dr. Sweeny indicated that appellant was uninterested in any surgical intervention. He noted appellant still had pain and limitation of motion in the right shoulder. Dr. Sweeny stated that appellant had permanent work restrictions in that he could stand walk or sit 8 hours a day, drive 1 hour at a time up to 2 hours a day, and lift or carry 10 pounds with no reaching above the shoulder on the right side.

In a March 1, 1996 report, a nurse assigned to appellant's case as a case manager noted appellant's work restrictions. She indicated that appellant had slipped and fallen in a grocery store and was unable to return to work. She stated that appellant was aware that she was working on light-duty job offers for him and that he was to return to work as soon as possible.

In a March 5, 1996 report, Dr. Sweeny described appellant's medical history and treatment. He noted appellant's employment injuries and also noted that appellant had a collar bone fracture when he was younger which had healed apparently with a large bump anteriorly. When appellant was in the armed services, he had surgery on the clavicle to remove a calcium deposit. Dr. Sweeny related that appellant complained of severe pain after 15 to 20 minutes of work and had pain with repetitive motion of his shoulder. He indicated that appellant's range of motion was forward flexion, 110 degrees; abduction, 100 degrees, and pain in isometric external rotation and isometric abduction. Dr. Sweeny reported that appellant had a significant positive impingement sign. He diagnosed chronic right shoulder pain, exacerbation of right shoulder calcific tendinitis, and right glenohumeral degenerative joint disease. Dr. Sweeny repeated his work restrictions of driving 1 hour at a time up to 2 hours a day, lifting and carrying of the right arm limited to 10 pounds for no more than 8 hours a day, no pushing or pulling with the right arm, no reaching above the shoulder with the right arm and no climbing. He recommended only waist level light activities of less than 10 pounds on the right side. Dr. Sweeny concluded that appellant's work activities had probably contributed to his diagnosis of calcium tendinitis and arthritis and had exacerbated these conditions. He stated that appellant was permanently precluded from his usual and customary occupation of sheet metal worker.

In a March 22, 1996 memorandum, appellant's supervisor indicated that he tried to contact appellant on March 18, 1996 to inform him that there was a job available for him at the employing establishment. He noted that appellant called back on March 20, 1996 and stated that he would be at the employing establishment that day but had to drop off paperwork at the personnel office. The supervisor reported that appellant did go to the personnel office but did

not report for work. The supervisor informed appellant that he was being placed as absent without leave effective March 20, 1996.

In a March 26, 1996 note, the rehabilitation nurse stated that appellant had told her that day that the Office would have to perform a suitability determination before he would accept a job. He added that he was planning to retire.

On April 3, 1996 the Office conducted a telephone conference to facilitate appellant's return to work. The Office noted that the employing establishment had stated that the job offered to appellant was within the medical limitations established for him and would consist of answering telephones. However, the Office had not received a written description of the job, even though appellant had returned to work. At the conference, appellant's supervisor indicated that a written description of the job had been given to appellant and would be given to the Office. The supervisor stated that appellant was answering telephones and hand-carrying messages and documents within the employing establishment. Appellant indicated that he was required to climb steps approximately six times a day. The supervisor commented that appellant would be required to do some work on the computer but had not begun that part of his work. The rehabilitation nurse indicated that she was concerned about appellant climbing stairs because of a prior knee injury and preferred that appellant's stair climbing be eliminated. Appellant's supervisor stated that the job requirements could be modified so that appellant would not have to climb the stairs. Appellant expressed concern about exposure to x-rays and nuclear radiation at the employing establishment but the supervisor responded that appellant was not in a part of the employing establishment where he would be exposed to such radiation. The supervisor agreed to change the job description to reflect that appellant would not have to climb stairs. He stated that the job was only a temporary offer at that time. An Office claims examiner indicated that appellant should be given an offer of a permanent position at some point.

In an April 4, 1996 letter, appellant indicated that he reported to the employing establishment on March 27, 1996 and was not given a written job description until the next day. He noted that one of the modifications that was to be made to the job description was to accommodate his medical conditions so he would not have to climb stairs. He stated that he had not yet received the amended temporary job offer or a permanent job offer. Appellant noted that in 1987 he had been placed on a temporary job status and had been warned that if no job was found for him in the employing establishment that was within his work restrictions, he would be separated from the employing establishment. He returned to regular duties in November 1987 without a job description. Appellant stated that the employing establishment had currently placed him in the same light-duty classification. He commented that, as he understood the procedures, he had to undergo a post fitness-for-duty evaluation before his return to work from restricted duties. Appellant stated that he had not undergone such an examination and that his physician had placed him on permanent and stationary status with residuals. He contended that, based on the legal requirement that he be supplied with a permanent job offer suitable to his physical limitations he was being ordered to return to work under unauthorized and unsafe conditions which might result in the loss of his job or his life.

The employing establishment submitted copies of the temporary duties of the position offered to appellant. In the March 28, 1996 job description, appellant was to provide general

office support, including answering the telephone and taking messages, assisting with paperwork, obtaining office supplies, running errands and deliveries, providing shop foreman assistance with material, supplies and paperwork, assisting with computer support, processing and delivering Federal Express deliveries and other types of mail, monitoring the security system for the building and following all radiation safety and job safety guidelines. In an April 11, 1996 job description, the employing establishment added that the job description satisfied the restriction set forth by medical light-duty waivers which included no ascending or descending of stairs as discussed in the telephone conference.

In a May 21, 1996 report, the rehabilitation nurse indicated that appellant had reported that he slipped and fell in a grocery store on February 13, 1996 and had pain in his buttocks, requiring him to use a cane. The nurse reported that appellant did not return to work until April 3, 1996. She noted that on April 9, 1996, appellant's supervisor informed her that appellant did not come to work from April 3 through 8, 1996, complaining of an upset stomach. On April 10, 1996 appellant informed the nurse that he had sustained a new injury to his knee and was filing a claim for the injury. She noted appellant had reported for light duty that day. In an April 15, 1996 note, the nurse stated that appellant performed only 1.5 hours of actual work on light duty and walked off the job when he was told that he could not use the fax machine at the employing establishment to send a letter to his congressman. In a May 14, 1996 report, the nurse reported that appellant had filed for disability retirement. Appellant resigned from the employing establishment effective April 30, 1996.

In a July 9, 1996 letter, appellant objected to the job offer made to him. He stated that he went to the personnel office on March 20, 1996 to inquire about the job offered to him. Appellant was told that he would maintain the same position number and a new job description was not on record. He expressed to the Office his concern about the lack of a modified job description. Appellant stated that he returned to work on March 21, 1996. He commented that upon his return to work he continually asked for a job description and was finally given one on March 28, 1996. Appellant complained that the job offer lacked integrity because it did not carry a position number and did not clearly define the duties in relationship to appellant's permanent disabilities. He indicated that he had a restriction of no climbing but he had to climb a steep flight of stairs to get to the office to which he was assigned. Appellant noted that his supervisor agreed to include a restriction of no climbing of stairs in this job description. He stated that on April 5, 1996 he twisted his knee while descending the stairs. Appellant stated that a new job description was compiled on April 11, 1996.

In an August 18, 1996 report, Dr. Sweeny repeated his work restrictions for appellant. He indicated that in regard to appellant's knee, his daily work activity is limited to mostly sedentary type and minimal walking. He stated that the permanent work restrictions regarding appellant's right shoulder were driving, to be limited to 1 hour at a time for a total of 2 hours a day, lifting or carrying with the right arm, to be limited to 10 pounds for no more than 8 hours a day, no pushing pulling or reaching above the shoulder with the right arm and no climbing.

In an October 18, 1996 report, Dr. Sweeny indicated that appellant described severe pain in his right shoulder after 15 to 20 minutes of activity including repetitive motion of the shoulder. He related that on examination appellant had diffuse tenderness on palpation around

the shoulder itself, mostly around the acromion. Dr. Sweeny noted that appellant had significant pain with external rotation and abduction and mild pain with internal rotation. He reported appellant's ranges of motion in the right shoulder as follows: abduction, 135 degrees; forward elevation, 151 degrees; internal rotation, 59 degrees; external rotation, 31 degrees; adduction, 3 degrees; and extension, 43 degrees. Dr. Sweeny indicated that he did not know what the Office wanted in requesting a measurement of backward elevation. He stated that the date of maximum improvement was February 6, 1996.

In a November 18, 1996 memorandum, an Office medical adviser indicated that appellant had a 2 percent permanent impairment for loss of flexion, a 1 percent permanent impairment for loss of extension, a 2 percent permanent impairment for loss of abduction, a 2 percent permanent impairment for loss of adduction, a 2 percent permanent impairment for loss of internal rotation and a 1 percent permanent impairment for loss of external rotation for a total 10 percent permanent impairment for loss of motion. She indicated that appellant had a grade 4, 80 percent impairment of the axillary nerve which, when multiplied by the 5 percent maximum impairment of the arm for total sensory loss of the axillary nerve, equaled a 4 percent permanent impairment of the arm. She concluded that appellant had a 14 percent permanent impairment of the arm.

In a November 22, 1996 decision, the Office issued a schedule award for a 14 percent permanent impairment of the right arm.

Appellant requested a written review of the record and submitted extensive documentation in support of his appeal. In a June 9, 1997 decision, the Office hearing representative found that appellant had no more than a 14 percent permanent impairment of the right arm. She therefore affirmed the Office's November 22, 1996 decision.

In a July 2, 1997 decision, the Office found that appellant was not entitled to any compensation after April 30, 1996 because he refused to perform light duties that were offered to him and were within his work restrictions.

The Board finds that the Office improperly found that appellant was not entitled to compensation after April 30, 1996.

The Office found that the light duty offered to appellant was within his work restrictions and that he retired rather than perform those duties. The Office's action was similar to those cases in which a claimant's compensation is terminated for refusal to accept suitable work. The Board, however, has held in those cases that a general offer of light-duty work which the employing establishment says complies with an attending physician's work restrictions is not sufficient for the Office to meet its burden to terminate a claimant's compensation for refusing to accept suitable work. The job duties and physical requirements of the job need to be fully described and a physician should review the physical requirements to determine whether they are in the employee's physical capability.[2] The Office's decision in this case was not a direct termination of continuing compensation but a retroactive finding that appellant was not entitled to compensation after a certain date because he had retired rather than take the light-duty job

[2] *See Herman L. Anderson*, 36 ECAB 253 (1984).

offered to him. However, in either situation, the Office has the burden of establishing that the light-duty job offered to appellant was properly described and suitable for appellant. The job descriptions given by the employing establishment on March 28 and April 11, 1996 give a general description of the duties appellant was to perform but did not include any description of the physical requirements that would be required to perform these duties. In particular, there was no indication that the lifting and carrying of office supplies, Federal Express packages or other material would be under the 10 pounds weight restriction required by Dr. Sweeny. Also, there is no indication that these job duties were reviewed by a physician to determine whether they would be within appellant's work restrictions. The Office therefore has failed to establish that the light-duty job offered to appellant was suitable and he therefore was not entitled to compensation when he decided to resign rather than perform the light-duty job offered to him.

The Board further finds that appellant has no more than a 14 percent permanent impairment of the right arm.

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.[5]

Under the A.M.A., *Guides*[6] the Office medical adviser properly calculated that appellant had a 10 percent permanent impairment for loss of motion in the shoulder based on the ranges of motion reported by Dr. Sweeny. The Office medical adviser indicated that under the A.M.A., *Guides* appellant had a 2 percent permanent impairment for his 151 degrees of flexion, a 1 percent permanent impairment for his 43 degrees of extension,[7] a 2 percent permanent impairment for 135 degrees of abduction, a 2 percent permanent impairment for 3 degrees of adduction,[8] a 2 percent permanent impairment for 59 degrees of internal rotation and a 1 percent permanent impairment for 31 degrees of external rotation.[9] The Office medical adviser also

[3] 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.304.

[5] *Thomas P. Gauthier,* 34 ECAB 1060, 1063 (1983).

[6] A.M.A., *Guides*, (4th ed. 1993).

[7] *Id.*, p. 43, figure 38.

[8] *Id.*, p. 44, figure 41.

[9] *Id.*, p. 45, figure 44.

properly determined that appellant had a four percent permanent impairment due to a sensory deficit in the shoulder.[10] Appellant's schedule award therefore was properly calculated. There is no medical evidence of record that would show that he had a greater impairment.

The decisions of the Office of Workers' Compensation Programs, dated June 9, 1997 and November 22, 1996, relating to appellant's schedule award for the arm, are hereby affirmed. The decision of the Office, dated July 2, 1996, relating to the denial of appellant's compensation after April 30, 1996, is hereby reversed.

Dated, Washington, D.C.
May 1, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[10] *Id.*, pp. 48-56, Tables 11, 15.