U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOBBY J. YOUNG and DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, Little Rock, Ark.

Docket No. 97-576; Submitted on the Record;
Issued October 26, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established entitlement to a schedule award under 5 U.S.C. § 8107.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained tenosynovitis of the right wrist with a ligament tear in the performance of duty. In an undated report received by the Office on August 21, 1995, Dr. Harris Gellman, an orthopedic surgeon, indicated that appellant had been discharged from his care on August 4, 1995 with permanent restrictions. Dr. Gellman provided results on examination and an impairment rating of the right arm. The Office referred appellant to Dr. William F. Blankenship, an orthopedic surgeon, for evaluation. In a report dated November 8, 1995, Dr. Blankenship provided range of motion limitations for the right wrist, but stated that appellant had not reached maximum medical improvement.

In a decision dated December 13, 1995, the Office determined that appellant was not entitled to a schedule award because Dr. Blankenship did not support a permanent impairment. By decision dated March 20, 1996, the Office reviewed the case on its merits and denied modification. By decisions dated April 22 and October 2, 1996, the Office found that the evidence was insufficient to warrant merit review of the claim.

The Board finds that the case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or

function.[1] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.[2]

In this case the Office found that appellant was not entitled to a schedule award under 5 U.S.C. § 8107, based on the report of the second opinion referral physician, Dr. Blankenship, who had stated that appellant had not reached maximum medical improvement. There is, however, conflicting evidence from Dr. Gellman on this issue. His report received on August 21, 1995 stated that appellant had been discharged from his care with permanent restrictions, and provided an impairment rating. This report indicates that Dr. Gellman believed that appellant had reached maximum medical improvement. Moreover, appellant submitted a May 16, 1996, report from Dr. Gellman, specifically stating that appellant had "reached his maximum healing."

The record therefore is in conflict on the issue of maximum medical improvement. Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[3] Accordingly, the Board finds that the Office should refer appellant to an impartial medical specialist for resolution of the conflict. The specialist should render an opinion as to whether appellant has reached maximum medical improvement, and if so, provide an opinion as the degree of permanent impairment under the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

[1] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

[2] *A. George Lampo*, 45 ECAB 441 (1994).

[3] *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

The decisions of the Office of Workers' Compensation Programs dated October 2, April 22 and March 20, 1996 and December 13, 1995 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
October 26, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member