

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE L. HARTMAN and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, San Diego, Calif.

*Docket No. 97-2085; Submitted on the Record;
Issued September 30, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has an employment-related permanent impairment of his left leg.

The Office of Workers' Compensation Programs accepted that appellant's February 11, 1991 employment injury, in which he stumbled over an aircraft chock and twisted his low back, resulted in a lumbar strain, a temporary aggravation of spinal stenosis, and radiculopathy. On August 5, 1994 appellant filed a claim for a schedule award, which was denied by an Office decision dated December 6, 1996.

The Board finds that the weight of the medical evidence establishes that appellant does not have an employment-related permanent impairment of the left leg.

There was a conflict of medical opinion in this case on the question of whether appellant's February 11, 1991 back injury resulted in a permanent impairment of appellant's left leg. Appellant's attending physician, Dr. Albert W. Lizarraras, a neurosurgeon, stated in March 27 and May 6, 1996 reports that appellant had an S1 radiculopathy secondary to a herniated disc at L5-S1, and that the disc bulge was consistent with his leg symptoms. Dr. Benjamin G. Cox, Jr., a specialist in legal medicine and neurosurgery to whom the Office referred appellant for a second opinion, concluded in a July 8, 1996 report that appellant had no evidence of spinal stenosis or of radiculopathy, and no permanent functional loss of use of his lower extremity.

To resolve this conflict of medical opinion, the Office referred appellant, the case record and a statement of accepted facts, to Dr. John Cleary, a Board-certified neurosurgeon. In a report dated August 15, 1996, Dr. Cleary set forth appellant's history, complaints, and findings on examination, including those on the Minnesota Multi-Phasic Personality Inventory (MMPI). Dr. Cleary also reviewed the prior medical reports and the results of the diagnostic testing, including x-rays, electromyography (EMG), a myelogram, computerized tomography (CT)

scans, and magnetic resonance imaging (MRI). Dr. Cleary concluded, “I find no objective basis for permanent functional loss of use of the lower extremities.” In an Office schedule award evaluation sheet, Dr. Cleary answered “None demonstrated” to the request to name the nerve root origin and specific nerve branch affected, and assigned zero percent permanent impairment of the lower extremity due to loss of function from sensory deficit, pain or discomfort and zero percent permanent impairment of the lower extremity due to loss of function from decreased strength, adding, in each instance, “No objective findings.”

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹ Dr. Cleary’s report meets this standard, constitutes the weight of the medical evidence, and establishes that appellant does not have an employment-related permanent impairment of the left leg.

The decision of the Office of Workers’ Compensation Programs dated December 6, 1996 is affirmed.

Dated, Washington, D.C.
September 30, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹ *James P. Roberts*, 31 ECAB 1010 (1980).