U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. GOHEEN and U.S. POSTAL SERVICE,
POST OFFICE, Lancaster, PA

Docket No. 00-1734; Submitted on the Record;
Issued December 3, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than 10 percent permanent impairment of the right and left upper extremities for which he received schedule awards.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for a decision.

On February 7, 1994 appellant, then a 43-year-old mailhandler, filed a claim for occupational disease alleging that his arm and elbow conditions were caused by his federal employment. The Office of Workers' Compensation Programs accepted appellant's conditions of tendinitis of both elbows and bilateral carpal tunnel syndrome and authorized carpal tunnel release. On February 26, 1998 appellant filed a claim for a schedule award. By decision dated April 29, 1998, the Office awarded appellant a 10 percent impairment to each upper extremity. Appellant disagreed with this decision and requested an oral hearing. A hearing was held on January 4, 1999 and the hearing representative in a decision issued and finalized on March 10, 1999, affirmed the Office's April 29, 1998 decision finding that appellant had a 10 percent impairment in each arm. By letter dated November 2, 1999, appellant, through counsel, requested reconsideration. By decision dated January 12, 2000, the Office denied modification of its March 10, 1999 decision.

The schedule award provisions of the Federal Employees' Compensation Act[1] set 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. The method of determining this percentage rests in the sound discretion of the Office.[2] To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform

[1] 5 U.S.C. § 8107

[2] *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

standards applicable to all claimants. The Office has adopted the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.[3]

The record includes a report from Dr. Stephen F. Latman, Board-certified in orthopedic surgery, who examined appellant on January 28, 1999 and reported findings. He noted that appellant's right carpal tunnel syndrome was equivalent to a 25 percent impairment of the right upper extremity. Dr. Latman further noted that his left carpal tunnel syndrome was equivalent to a 20 percent impairment rating, that left cubital tunnel syndrome was equivalent to a 25 percent impairment and that the left radial tunnel syndrome was equivalent to a 25 percent impairment. He then noted that the combined values resulted in a 58 percent impairment of the left upper extremity. Further, Dr. Latman did not explain how he arrived at his determinations that appellant's right carpal tunnel syndrome was equivalent to a 25 percent impairment of the right upper extremity, while his left carpal tunnel syndrome was equivalent to a 20 percent impairment of the left upper extremity.

In a report dated September 14, 1999, Dr. David Weiss, an osteopath, stated that he had examined appellant and diagnosed cumulative and repetitive trauma disorder, left radial tunnel syndrome, left ulnar nerve dysfunction at the cubital tunnel, right ulnar nerve entropathy at the cubit tunnel, status post left carpal tunnel, left radial tunnel decompression, right ulnar nerve transposition, status post carpal tunnel syndrome (right) and bilateral carpal tunnel syndrome. He then recommended an impairment rating of 64 percent for the combined total of the left upper extremity and 46 percent for the combined total of the right upper extremity.

In a report dated February 20, 1997, Dr. Stanley R. Askin, Board-certified in orthopedic surgery, noted a familiarity with appellant's history of injury and reported findings. He noted appellant's subjective complaints of a "burning in the area of the elbows, right more so than left, associated with lifting." Dr. Askin further noted pain in both hands, post-surgical and noted stiffness in his arms if held stationery. Upon examination, he noted that extension of the right elbow caused pain in the anterior elbow and that percussion over the median nerves at the wrist produced paresthesias into the digits. Dr. Askin noted that appellant had reached maximum medical improvement and concluded that his condition was "muscle soreness or overuse type of process involving his upper extremities." He added that appellant would have ongoing symptoms with unrestricted work activities.

The Office medical adviser reviewed the medical evidence of record and determined that Dr. Askin's report properly noted appellant's numbness in the median distribution distal to carpal tunnel and determined, based on the A.M.A., *Guides*, that appellant's impairment for mild carpal tunnel syndrome was 10 percent impairment for both arms. He also agreed with Dr. Askin that appellant's date of maximum medical improvement was February 20, 1997.

The Board notes that, if the medical evidence established a preexisting condition or conditions affecting appellant's upper extremities, these impairments would be compensable. The Office's procedure manual provides that the percentage of impairment should include the

[3] *James A. England*, 47 ECAB 115 (1995).

conditions accepted by the Office as job related and any preexisting permanent impairment of the same member or function.[4]

In this case, Dr. Latman noted in addition to appellant's carpal tunnel syndrome that he also had bilateral cubital tunnel syndrome for which he made an impairment rating. Further, Dr. Weiss diagnosed cumulative and repetitive trauma disorder, left radial tunnel syndrome, left ulnar nerve dysfunction, right ulnar nerve, left radial tunnel decompression and right ulnar nerve transposition in addition to the accepted injuries.

However, instead of combining appellant's preexisting impairment with his employment-related impairment, the Office ruled out the diagnoses from Drs. Latman and Weiss that did not relate to appellant's accepted injuries. On remand the Office should further develop the medical evidence as to appellant's bilateral upper extremity conditions and obtain an impairment rating based on appellant's accepted injuries and any preexisting medical conditions. The Office shall then issue a *de novo* decision consistent with this decision of the Board.

The January 12, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development of the case record and a *de novo* decision consistent with this decision.

Dated, Washington, DC
December 3, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (October 1990).