

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL KING and U.S. POSTAL SERVICE,
POST OFFICE, Grundy, VA

*Docket No. 00-2226; Submitted on the Record;
Issued October 22, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to a schedule award.

Appellant filed a traumatic injury claim alleging that he sustained injuries on February 6, 1995 due to a motor vehicle accident while in the performance of duty. In a decision dated August 4, 1999, the Office determined that appellant was not entitled to a schedule award.¹ By decision dated June 15, 2000, the Office denied modification.

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.² 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.³

In this case, the Office referred appellant to Dr. Yogesh Chand, a Board-certified orthopedic surgeon. Following receipt of Dr. Chand's June 19, 1998 report, the Office found that a conflict existed under 5 U.S.C. § 8123(a), and appellant was referred to Dr. Stephen

¹ The memorandum accompanying this decision does not appear to be in the record.

² 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. § 10.404(a).

³ A. *George Lampo*, 45 ECAB 441 (1994). See 20 C.F.R. § 10.404.

Schroering, a Board-certified orthopedic surgeon. Although the Office considered Dr. Schroering an impartial medical specialist, the prior medical evidence was not of sufficient probative value to create a conflict, for the reasons addressed below. Dr. Schroering is therefore considered a second opinion referral physician.⁴

The statement of accepted facts that was provided to the referral physicians in this case states that the claim was accepted for cervical strain, right ankle sprain and right arm contusion. It further states that appellant was treated for a left elbow condition and pneumoconiosis. The record, however, clearly indicates that the Office had also accepted left arm pyarthrosis as employment related. The Form CA-800 (FECA Nonfatal summary) lists left arm pyarthrosis as a condition caused by injury, along with cervical strain, right ankle strain and right arm contusion. An Office letter dated August 6, 1997 advises appellant that his claim was accepted for “cervical strain, right ankle strain, contusion of right arm and left arm pyarthrosis.” The acceptance of the left arm condition was apparently based on a January 16, 1996 report from Dr. William E. Kennedy, an orthopedic surgeon, opining that a cervical epidural steroid injection on June 16, 1995 for the employment injury resulted in pyarthrosis of the elbow commencing several days later. Dr. Kennedy indicated that appellant had a permanent ankylosis of the left elbow as a result.

The record therefore establishes that the Office had accepted a left elbow pyarthrosis as a consequential injury in this case. There is no indication that the Office rescinded acceptance of this condition. The statement of accepted facts should have clearly indicated that the left elbow condition was an accepted employment injury. With respect to any permanent impairment, this is clearly relevant information, since both Dr. Chand and Dr. Schroering did note a left elbow impairment but found that appellant’s left arm condition was not employment related. Dr. Chand opined that the epidural injection did not cause a left elbow infection, and Dr. Schroering also opined that the left elbow pyarthrosis was not causally related to his employment.

The Board accordingly finds that the statement of accepted facts provided to the referral physicians was not accurate or complete, since the Office had accepted left elbow pyarthrosis and this was not reflected in the statement of accepted facts. The reports of Dr. Chand and Dr. Schroering are therefore of diminished probative value on the issue of a permanent impairment. On remand that Office should further develop the record to resolve the remaining issues with regard to whether appellant is entitled to a schedule award in this case. After such further development as it deems necessary, it should issue an appropriate decision.

⁴ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The decision of the Office of Workers' Compensation Programs dated June 15, 2000 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
October 22, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member