

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROYCE W. STROZAK and DEPARTMENT OF THE NAVY,
NAVY AVIATION DEPOT, Cherry Point, NC

*Docket No. 03-754; Submitted on the Record;
Issued May 22, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant has more than a 14 percent permanent impairment of his right upper extremity and a 10 percent permanent impairment of his left upper extremity for which he received schedule awards; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for merit review.

On June 10, 1998 appellant, then a 57-year-old aircraft engine repairer, filed a claim alleging that he sustained bilateral carpal tunnel syndrome due to performing various repetitive tasks with his upper extremities.¹ The Office accepted that appellant sustained bilateral carpal tunnel syndrome and tardy ulnar nerve palsy. This claim was given the file number A6-705429. On July 17, 1998 appellant underwent a left carpal tunnel release and on September 18, 1998 he underwent a right carpal tunnel release.² These procedures were authorized by the Office. The record contains documents which indicate that the Office approved a left ulnar nerve transfer surgery at the elbow which was scheduled to be performed in April 2001. However, the record does not contain any medical evidence that the surgery was performed. It appears from the record that appellant also filed another claim (bearing the file number A6-202174) concerning his upper extremities. Documents of record suggest that this claim was also accepted for bilateral carpal tunnel syndrome as well as a left ulnar nerve lesion.³

Appellant applied for a schedule award. By award of compensation dated March 2, 1999, the Office granted schedule awards for 10 percent permanent impairment of his right upper extremity and 10 percent permanent impairment of his left upper extremity. The Office based its award on a February 19, 1999 report in which an Office medical adviser determined that the mild

¹ Prior to filing his claim, appellant began working in a limited-duty position.

² By October 1998 appellant had returned to limited-duty work; he later returned to his regular work.

³ An Office claims examiner indicated that the two claims should be combined with the present claim (A6-705429) as the master file.

entrapment of appellant's median nerves at the wrists justified such impairment ratings under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁴

Appellant alleged that he was entitled to additional schedule award compensation for a worsening of his condition due to continuing employment exposure. By award of compensation dated September 16, 2002, the Office granted appellant an additional schedule award for four percent permanent impairment of his right upper extremity. The Office based its award on reports, dated August 2 and 28, 2002, in which an Office medical adviser indicated that appellant exhibited a loss of 18 degrees of right elbow extension which entitled him to this additional impairment rating.⁵ Appellant now had been compensated for a 14 percent permanent impairment of his right upper extremity and a 10 percent permanent impairment of his left upper extremity.

By letter dated October 24, 2002, appellant requested reconsideration of his claim. He claimed that he had two separate approved surgeries, carpal tunnel surgery and ulnar nerve transplant surgery, which involved two separate areas of his upper extremities, his wrists and elbows. Appellant claimed that the Office had not adequately taken these facts into account when it calculated his schedule awards. He submitted additional medical documents including an August 16, 2001 note in which Dr. Armistead indicated that, under the standards of the A.M.A., *Guides*, he had a 14 percent permanent impairment of his left upper extremity due to "residual ulnar nerve dysfunction from the elbow and distally."⁶ These reports also contained discussion of the follow-up treatment for appellant's left ulnar nerve transfer surgery at the elbow. By decision dated January 14, 2003, the Office denied appellant's request for merit review.

The Board finds that the case is not in posture for decision regarding whether appellant has more than a 14 percent permanent impairment of his right upper extremity and a 10 percent permanent impairment of his left upper extremity for which he received schedule awards.

An employee seeking compensation under the Federal Employees' Compensation Act⁷ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,⁸ including that he sustained an injury in the performance of

⁴ A.M.A., *Guides* 57 at Table 16 (4th ed. 1993).

⁵ The Office medical adviser evaluated findings contained in a July 2, 2002 report of Dr. Ray B. Armistead, an attending Board-certified orthopedic surgeon, who noted that appellant exhibited a loss of 18 degrees of right elbow extension which entitled him to an additional 4 percent impairment rating. Dr. Armistead inadvertently indicated that appellant's total right upper extremity impairment was 18 percent rather than 14 percent. This report bears the file number A6-202174.

⁶ Dr. Armistead made reference to Tables 11 and 14 of the A.M.A., *Guides* but did not elaborate on the method of calculation.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

duty as alleged and that his disability, if any, was causally related to the employment injury.⁹ The schedule award provision of the Act¹⁰ and its implementing regulation¹¹ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. In evaluating entitlement to schedule award compensation, it is necessary to consider all the accepted employment injuries.¹²

In the present case, appellant received schedule awards for a 14 percent permanent impairment of his right upper extremity and a 10 percent permanent impairment of his left upper extremity. He alleged that he was entitled to additional schedule award compensation for a worsening of his condition due to continuing employment exposure. Appellant argued that the Office had not properly taken his multiple surgeries, carpal tunnel surgery and ulnar nerve transplant surgery, into account when it calculated his schedule awards.

The Board notes that it appears that the Office did not properly take all of appellant's accepted employment injuries and surgeries into account when evaluating the extent of his permanent impairment. The present claim (A6-705429) was accepted for bilateral carpal tunnel syndrome and tardy ulnar nerve palsy. In connection with this claim, a July 17, 1998 left carpal tunnel release and a September 18, 1998 right carpal tunnel release were authorized. It appears from the record that appellant also filed another claim (bearing the claim number A6-202174) concerning his upper extremities and that this claim was also accepted for bilateral carpal tunnel syndrome as well as a left ulnar nerve lesion. An Office claims examiner indicated that the two claims would be combined with the present claim (A6-705429) as the master file. However, it appears that documents from claim number A6-202174 are missing from the record and it remains unclear whether the two files were actually combined. For example, the record contains documents which indicate that the Office approved a left ulnar nerve transfer surgery at the elbow which was scheduled to be performed in April 2001, but the record does not contain any medical documents detailing the performance of such surgery.

Under the Act, although it is the burden of an employee to establish his or her claim, the Office also has a responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹³ Due to the above-described circumstances it does not appear that the Office had an adequate basis upon which to render a decision on appellant's entitlement to schedule award compensation. Moreover, appellant submitted an August 16, 2001 note in which Dr. Armistead, an attending Board-certified orthopedic surgeon, indicated that, under the standards of the A.M.A., *Guides*, he had a 14 percent permanent impairment of his left upper extremity due to "residual ulnar nerve dysfunction from the elbow and distally."¹⁴ Therefore, in

⁹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁰ 5 U.S.C. § 8107.

¹¹ 20 C.F.R. § 10.304.

¹² *See LaFern W. Miller*, 9 ECAB 375, 377 (1957).

¹³ *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).

¹⁴ Dr. Armistead made reference to Tables 11 and 14 of the A.M.A., *Guides* but did not elaborate on the method

order for the Office to reach an informed decision, the case should be remanded to the Office for further evidentiary development regarding the extent of the permanent impairment of appellant's upper extremities.

On remand, the Office should take into account all of appellant's accepted employment injuries and surgeries into account when evaluating the extent of his permanent impairment. The Office should attempt to obtain the relevant evidence regarding his condition including documents concerning his apparent left ulnar nerve transfer surgery. After such further development as the Office deems necessary, an appropriate decision should be issued regarding the extent of the permanent impairment of appellant's upper extremities.¹⁵

The decision of the Office of Workers' Compensation Programs dated September 16, 2002 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
May 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

of calculation.

¹⁵ Given the Board's disposition of the merit issue of this case, it is not necessary for it to consider the nonmerit issue.