U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES HAWKINS, JR. and DEPARTMENT OF VETERANS AFFAIRS, EDWARD HINES, JR. VETERANS ADMINISTRATION HOSPITAL, Hines, IL

Docket No. 03-1232; Submitted on the Record;
Issued January 6, 2004

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 12 percent permanent impairment of his right upper extremity for which he received a schedule award.

On August 7, 1993 appellant, then a 49-year-old housekeeping aide, filed a traumatic injury claim alleging that on that date he hurt his right shoulder and the right side of his neck while pulling an auto scrubber. Appellant stopped work on August 23, 1993 and he returned to full-time light-duty work on March 7, 1994.[1]

The Office of Workers' Compensation Programs accepted appellant's claim for a right rotator cuff sprain. The Office approved surgery which was performed on November 30, 1993 and October 3, 1995.

On April 18, 1996 appellant filed a claim for a schedule award.

On May 28, 2001 an Office medical adviser reviewed appellant's medical records and determined that appellant had a 12 percent permanent impairment of the right upper extremity. He also determined that appellant reached maximum medical improvement on October 3, 1996, approximately one year from the date of his most recent surgery.

By decision dated January 8, 2003, the Office granted appellant a schedule award for a 12 percent permanent impairment of his right upper extremity for 37.44 weeks covering the period August 10 through September 30, 2001 with no continuing payments.

The Board finds that appellant has no more than a 12 percent permanent impairment of his right upper extremity for which he is entitled to a schedule award.

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[1] Appellant was terminated by the employing establishment effective January 17, 1997.

The schedule award provisions of the Federal Employees' Compensation Act[2] and its implementing regulation[3] 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. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office previously granted appellant a schedule award for a 12 percent permanent impairment of his right upper extremity due to the August 7, 1993 employment-related right shoulder injury. The Office received a January 28, 1997 report of Dr. Charles Carroll, IV, a Board-certified orthopedic surgeon and appellant's treating physician. In this report, Dr. Carroll noted appellant's complaints of intermittent pain in his shoulder. He provided his findings on physical and objective examination, and opined that appellant had reached maximum medical improvement. Dr. Carroll discharged appellant from his care. He determined that appellant had a 15 percent permanent impairment of his right upper extremity and noted his physical restrictions. Dr. Carroll did not indicate which tables of the A.M.A., *Guides* he used to calculate his impairment rating. Board precedent is well settled, however, that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based upon the application of the A.M.A., *Guides*, the Office is correct to follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.[4] Board cases are clear that, if the attending physician does not utilize the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of any permanent impairment.[5]

As Dr. Carroll did not demonstrate that he applied the A.M.A., *Guides* in assessing appellant's permanent impairment due to a right rotator cuff sprain and repair, his report is of diminished probative value. On the other hand, the Office medical adviser reviewed appellant's medical records, including Dr. Carroll's January 28, 1997 report, and applied the fifth edition of the A.M.A., *Guides*. He noted that appellant complained of continued pain which accounted for a two percent permanent impairment for Grade 3 pain in the distribution of the suprascapular nerve based on Table 16-15, page 492 and Table 16-11, page 484. He further noted that a physical examination demonstrated full range of motion, no evidence of impingement and intact rotator cuff function in appellant's right shoulder. He stated that the remainder of appellant's extremity was within normal limits. The Office medical adviser determined that appellant had an additional 10 percent permanent impairment for the distal clavicle resection based on Table 16-27 page 506. Utilizing the Combined Values Chart on page 604, the Office medical adviser

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *See Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

[5] *See Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Raymond Montanez*, 31 ECAB 1475 (1980).

determined that appellant had a 12 percent permanent impairment of the right upper extremity. The Board finds that the Office medical adviser properly applied the tables in the A.M.A., *Guides* and his report constitutes the weight of the medical evidence. Therefore, the Board finds that appellant has no more than a 12 percent impairment of his right upper extremity.

As previously noted, the Office's January 8, 2003 decision granted appellant a schedule award for a 12 percent permanent impairment of his right upper extremity for 37.44 weeks covering the period August 10 through September 30, 2001. With respect to schedule awards for the right upper extremity, the Act provides that, for a total or 100 percent loss of use of the right upper extremity, an employee shall receive 312 weeks of compensation.[6] As appellant has no more than a 12 percent loss of use of his right upper extremity, he is entitled to 12 percent of the 312 weeks of compensation, which is 37.44 weeks. The Office, therefore, properly determined the number of weeks for which appellant is entitled to compensation under the schedule award provisions of the Act.

On appeal, appellant states that he only received a schedule award payment for the period August 10 through September 30, 2001, but that he was placed back on the Office's roll starting October 1, 2001.[7] Appellant contends that he never received compensation for 37.44 weeks pursuant to his schedule award. The record reveals that appellant was terminated by the employing establishment on January 17, 1997. He received a disability retirement annuity from the Office of Personnel Management (OPM) through September 30, 2001. On September 13, 2001 appellant elected to receive compensation benefits under the Act in lieu of benefits provided by OPM effective October 1, 2001. By letter dated October 11, 2001, the Office advised OPM about appellant's election. On November 16, 2001 the Office issued a compensation check to appellant for the period October 1 through November 3, 2001. The Board has held that a claimant cannot concurrently receive compensation under a schedule award and compensation for total disability for work.[8] Therefore, the Board finds that appellant is not entitled to receive payments pursuant to his schedule award concurrently with his disability compensation.

[6] 5 U.S.C. § 8107(c)(1).

[7] The record reveals that on November 16, 2001 the Office issued a compensation check to appellant for his schedule award in the amount of $2,458.86 covering the period August 10 through September 30, 2001.

[8] *See Orlando Vivens*, 42 ECAB 303 (1991); *Eugenia L. Smith*, 41 ECAB 409 (1990).

The January 8, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 6, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member