

On February 1, 2001 appellant, then a 44-year-old mail processor, filed a traumatic injury claim alleging that on January 30, 2001 he injured his neck and left arm while lifting in the performance of duty.

A magnetic resonance imaging (MRI) scan on March 18, 2001 revealed disc herniations at C4-5, C5-6, C6-7 and C7-T1. The Office accepted his claim for herniated disc of the cervical spine.

Appellant filed a notice of recurrence of disability on August 2, 2001, alleging that on July 11, 2001 he developed a right hand injury due to his accepted January 30, 2001 employment injury. The Office accepted appellant's claim, but did not accept that he sustained a consequential injury.

Appellant returned to light-duty work February 19, 2002. He filed a recurrence of disability on March 7, 2002. Appellant returned to light-duty work on March 13, 2002.

Dr. Henry Pool, a Board-certified neurosurgeon, performed a C4-5, C5-6 and C6-7 anterior cervical discectomy and fusion with allograft anterior plate instrumentation on July 1, 2002. The Office accepted aseptic meningitis as a result of complications of appellant's authorized surgery. The Office entered appellant on the periodic rolls on October 17, 2002.

Appellant returned to light duty on February 25, 2003. In a report dated August 4, 2003, Dr. Pool opined that appellant had reached maximum medical improvement. He opined that appellant had permanent impairment rating of 25 percent. Appellant requested a schedule award on August 7, 2003.

In a letter dated September 23, 2003, the Office requested that Dr. Pool provide an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>1</sup> Dr. Pool responded on September 24, 2003, stating that his impairment rating related to appellant's spine. However, he also noted that appellant had some intermittent thumb numbness and paraesthesias, which worsened after activity which he attributed to chronic C6 nerve root damage.

On October 29, 2003 the Office informed Dr. Pool that appellant was not entitled to a schedule award for injury to his spine, but only as it related to impairment of a scheduled member. Dr. Pool made notes on the Office letter indicating left upper extremity sensory impairment due to C6, C2 and C8 paraesthesias and light touch. He also indicated that appellant had left upper extremity motor loss intrinsic 4/5.

An Office medical adviser reviewed Dr. Pool's reports on November 14, 2003 and stated that intermittent thumb numbness and paraesthesias on the left due to chronic C6 nerve root damage, was a 25 percent impairment of the maximum value of the C6 nerve root, which is 8 percent or 2 percent impairment of the left upper extremity.

By decision dated November 18, 2003, the Office determined that appellant's light-duty position of modified rural carrier fairly and reasonably represented his wage-earning capacity.

By decision dated November 24, 2003, the Office granted appellant a schedule award for a two percent impairment of his left upper extremity. Appellant requested an oral hearing on

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<sup>1</sup> A.M.A., *Guides*, (5<sup>th</sup> ed. 2000).

December 12, 2003 and appellant submitted a report dated January 22, 2004 from Dr. Charles V. Taft, a Board-certified orthopedic surgeon, which diagnosed right had pain of uncertain etiology.

Appellant filed a notice of recurrence of disability on April 8, 2004 and a notice of occupational disease on April 12, 2004 alleging that he developed neck and hand pain after lifting mail sacks while in the performance of duty.

Appellant testified at his oral hearing on October 26, 2004 that he had a 25 percent impairment of his spine. Following the oral hearing, appellant submitted documents from Dr. Pool indicating that appellant's 25 percent impairment rating was appropriate based on impairment of the whole person due to specific spine disorders.

By decision dated January 21, 2005, the hearing representative affirmed the Office's decision dated November 24, 2003, finding that appellant had no more than a two percent impairment of his left upper extremity due to his accepted employment injury.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> sets 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. Neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or for impairment to the whole person.<sup>4</sup> However, the schedule award provisions of the Act include the extremities. A claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>5</sup>

### **ANALYSIS**

Appellant's attending physician, Dr. Pool, a Board-certified neurosurgeon, opined that appellant had reached maximum medical improvement on August 4, 2003 and estimated impairment to be 25 percent to the spine. On September 24, 2003 he again noted that appellant's impairment rating was to his spine, but further noted that appellant had intermittent left thumb

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> *George E. Williams*, 44 ECAB 530, 533 (1993).

<sup>5</sup> *Id.*

numbness and paraesthesias, which he attributed to chronic C6 nerve root damage. Dr. Pool provided an undated report indicating that appellant's left upper extremity sensory impairment was due to C6, C2 and C8 paraesthesias. He also indicated that appellant had some motor loss. Dr. Pool did not provide any impairment rating of the left thumb in conformance with the A.M.A., *Guides*.

The Office medical adviser applied the A.M.A., *Guides* to Dr. Pool's findings regarding appellant's left upper extremity. He noted that the maximum value of the C6 nerve root due to sensory deficit or pain was eight percent.<sup>6</sup> He next classified the sensory deficit as Grade 4 described as distorted superficial tactile sensibility, diminished light touch with some abnormal sensations which allows, 25 percent for sensory deficit.<sup>7</sup> He multiplied the 8 percent maximum value by the 25 percent grade to rate appellant's impairment rating as 2 percent of the left upper extremity.

Following the oral hearing Dr. Pool indicated that appellant's impairment rating of 25 percent was based on spinal impairment of the whole person. As noted previously, the Act does not provide for schedule awards for either the spine or the whole person.<sup>8</sup> Appellant is not entitled to a schedule award for the spine or the whole person.

### **CONCLUSION**

The Board finds that appellant has no more than a two percent impairment of his left upper extremity for which he received a schedule award.

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<sup>6</sup> A.M.A., *Guides* 424, Table 15-17.

<sup>7</sup> *Id.* at Table 15-15.

<sup>8</sup> *Brent A. Barnes*, 56 ECAB \_\_\_\_ (Docket No. 04-2025, issued February 15, 2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 21, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board