U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD L. PRZYBY and DEPARTMENT OF THE ARMY, ARMY NATIONAL GUARD, Springfield, Ill.

Docket No. 96-1428; Submitted on the Record; Issued March 12, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, MICHAEL E. GROOM

The issue is whether appellant has more than a 16 percent permanent impairment of the left upper extremity.

On April 22, 1992 appellant, then a 35-year-old heavy mobile equipment mechanic, filed a claim for compensation (Form CA-2) alleging that on April 17, 1992 he first realized that upper neck pain extending down his back into his left leg was caused by his federal employment. The Office accepted the claim for temporary aggravation of preexisting degenerative disc disease, cervical strain and permanent aggravation herniated nucleus pulposus (HNP) to cervical and lumbar discs with myelopathy and bilateral carpal tunnel syndrome. Appellant was placed on the periodic compensation rolls effective March 13, 1993.

By letter dated May 26, 1995, the Office referred appellant to Dr. Charles W. Mercier, a Board-certified orthopedic surgeon, for an opinion of the amount of permanent impairment of appellant's upper or lower extremities pursuant to the 4th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*

In a report dated June 13, 1995, Dr. Mercier, based upon a physical examination review of the medical records and statement of accepted facts, diagnosed C6-7 anterior discectomy and fusion for degenerative disc disease, L4-6 laminectomy and disc removal for a central HNP at L4-5 and bilateral carpal tunnel syndrome with the right asymptomatic and the left minimally asymptomatic. Dr. Mercier noted that appellant had returned to work in May 1995 and had reached maximum medical improvement. Dr. Mercier noted:

> "Forward flexion of the neck is to 60 degrees and extension is to 40 degrees. Lateral bending is to 60 degrees on the right [and] 50 degrees on the left. Lateral rotation is equal and full.

"On examination of the upper extremities, muscle strength to manual testing is normal of the deltoid, elbow flexors and extensors and grip. *** The Tinel's sign over the ulnar nerve at the elbow is positive bilaterally. The Phelan test is negative bilaterally. The biceps, triceps and brachioradialis reflexes are 1 bilaterally. The Hoffman reflex is negative bilaterally. There are good radial pulses and distal perfusion."

Dr. Mercier opined that appellant had bilateral carpal tunnel syndrome as evidenced by objective testing. Dr. Mercier noted that "his clinical examination today suggests that his left carpal tunnel syndrome is minimally symptomatic and his right carpal tunnel syndrome is asymptomatic" and appellant has "no motor or sensory loss in his hands." Dr. Mercier opined that appellant "has no functional impairment of either upper or lower extremities. Therefore, his disability is zero."

On August 21, 1995 the Office requested the Office medical adviser to review Dr. Mercier's report. On September 9, 1995 the Office medical adviser reviewed Dr. Mercier's report and opined that appellant had a 10 percent permanent impairment of the left upper extremity due to his mild carpal tunnel syndrome. The Office medical adviser based his opinion on Table 16, page 54[1] of the A.M.A., *Guides* (4th ed). He noted that the medical evidence did not support any impairment of the right upper extremity or either lower extremity.

On October 25, 1995 the Office granted appellant a schedule award for a 16 percent impairment of his left arm for the period June 13, 1995 through May 27, 1996, fraction of day, for a total of 49.92 weeks of compensation.

On November 13, 1995 appellant, through counsel, requested reconsideration of the percentage of the schedule award received as well as the period of the schedule award. Appellant contended that the award failed to take into consideration all of his accepted conditions.

By decision dated February 2, 1996, the Office denied modification of the October 25, 1995 schedule award.

The Board finds that appellant has no more than a 10 percent impairment of his left upper extremity, for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, no schedule award is payable for a member, function or organ of the body not

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[1] The correct page number is 57.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.304.

specified in the Act or in the regulations.[4] This principle applies to body members that are not enumerated in the schedule award provision before the 1974 amendment[5] as well as to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment.[6] Thus, because spinal injuries are not listed in the compensation schedule, no award may be issued for permanent impairment of the back.

In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Thus, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.

However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.[7]

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[8]

In the instant case, the schedule award issued to appellant was for carpal tunnel syndrome of his left upper extremity was based upon the report of Dr. Mercier, a second opinion Board-certified orthopedic surgeon. Dr. Mercier's report does not demonstrate that appellant's right upper extremity or lower extremities are impaired due to his accepted conditions and, thus, he is not entitled to a schedule award for these schedule members. The Board finds that the report of Dr. Mercier is based on a review of the entire record, physical examination and statement of accepted facts. The Office medical adviser based his opinion regarding the extent of impairment upon Dr. Mercier's report. The Office medical adviser applied Table 16 of the A.M.A., *Guides* to the mild left upper extremity entrapment neuropathy described by Dr. Mercier to calculate a 10 percent impairment of the left upper extremity and a 0 percent permanent impairment of the

[4] *William Edwin Muir*, 27 ECAB 579, 581 (1976); *see Terry E. Mills*, 47 ECAB 309 (1996) (listing the members and organs of the body for which the loss or loss of use is compensable under the schedule award provisions).

[5] The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

[6] *John F. Critz*, 44 ECAB 788, 792-93 (1993) (brain disorder); *Ted W. Dietderich*, 40 ECAB 963, 965 (1989) (gallbladder); *Thomas E. Stubbs*, 40 ECAB 647, 649 (1989) (spleen).

[7] *Lena P. Huntley*, 46 ECAB 643 (1995).

[8] *William F. Simons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

right upper extremity.[9] Appellant has not submitted any other medical evidence, utilizing the A.M.A., *Guides,* which shows more than a 10 percent permanent impairment of the left upper extremity. The medical evidence of record supports no more than a 10 percent impairment of appellant's left upper extremity.[10]

On appeal appellant contends that the schedule award fails to take into consideration all of his accepted conditions. A review of Dr. Mercier's report and the report by the Office medical adviser do not substantiate this allegation. The back is specifically excluded from the definition of organ which appears in the Act and, thus, no schedule award can be issued for the back.[11] The report of Dr. Mercier does not support any impairment to appellant other than his left upper extremity.

The decisions of the Office of Workers' Compensation Programs dated February 2, 1996 and October 25, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 12, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

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[9] Table 16 at page 57 evaluates the impairment of the upper extremity secondary to entrapment neuropathy and provides estimates based upon the severity of the involvement of the affected nerve.

[10] The award of a 16 percent impairment by the Office appears to be due to a clerical error.

[11] *See Terry E. Mills*, *supra* note 4; *George E. Williams*, 44 ECAB 530 (1993); *James E. Mills*, 43 ECAB 215 (1991).