

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DICK GAYLORD and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Chicago, IL

*Docket No. 99-451; Submitted on the Record;
Issued December 4, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to a schedule award for permanent partial impairment causally related to his employment injury of August 25, 1989.

On August 25, 1989 appellant, then a 56-year-old elevator operator, was injured in the performance of duty when a bulk mail cart popped open and struck him on the head.¹ The Office of Workers' Compensation Programs accepted the claim for a contusion to the head and an aggravation of C5-6 radiculopathy on the right and left. Appellant was off work from the date of injury until December 27, 1997, when he returned to work in a modified position as a custodial laborer.² Appellant received appropriate compensation for wage loss and medical benefits.

On January 9, 1998 appellant filed a CA-7 claim for a schedule award.

In a letter dated January 22, 1998, the Office advised appellant that he was required to submit a narrative medical report from his attending physician with specific impairment ratings with regard to his permanent partial impairment under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a March 8, 1993 report, Dr. Topel, a Board-certified neurologist and appellant's treating physician, advised that appellant was treated for a right peripheral 7th nerve palsy which

¹ On September 20, 1989 appellant sustained a nonwork-related injury when he hit his head getting into his van. The record indicates that a magnetic resonance imaging (MRI) of the cervical spine on January 12, 1990 revealed cervical spondylosis changes with "severe spinal stenosis at the C4-5 level resulting from marginal osteophytes and disc bulging."

² On March 18, 1998 the Office determined that the position of a modified custodial laborer fairly and reasonably represented appellant's wage-earning capacity; therefore, appellant's benefits were adjusted to reflect his earnings in that job.

began approximately two weeks prior to the office visit. Dr. Topel opined that appellant's condition was unrelated to the August 25, 1989 work injury and stated:

“Numerous times during my history and examination I attempted to tell [appellant] that he had a right peripheral 7th nerve palsy, likely Bell's palsy. I told him it was extremely difficult to me to relate this current problem which had just begun in the middle of February 1993, to an injury that he sustained in 1989. [Appellant] was extremely argumentative during the examination. He accused me of leaving him out in the cold and not taking care of his previous medical problems.”

In a May 8, 1995 report, Dr. Topel indicated that appellant complained of head pain and had signs and symptoms in the left arm consistent with left C5-6 radiculopathy. He noted physical findings and opined that it was possible that appellant's ongoing radiculopathy was related to the August 25, 1989 work injury or at least aggravated by that injury. Dr. Topel also noted, however, that it was very unlikely that appellant's head pain was related to an active intracranial problem surfacing six years after the employment-related head injury. He related that appellant was insistent that most of his current medical problems were related to the August 25, 1989 work injury.

On April 21, 1997 the Office requested that Dr. Topel prepare a comprehensive medical report regarding appellant's work-related medical condition.

In a May 27, 1997 report, Dr. Topel noted that he last examined appellant on May 8, 1997. Dr. Topel related that appellant had continuing complaints of head and neck pain with weakness in both arms. He noted physical findings and an MRI report dated June 7, 1996, which showed evidence of cervical spondylosis. Dr. Topel opined that appellant's symptoms were consistent with left C5-6 radiculopathy. He diagnosed left C5-6 radiculopathy and post-traumatic headaches. He concluded that appellant's symptoms could have been aggravated by the injury on August 25, 1989.

In an Office form dated May 27, 1997, Dr. Topel indicated that appellant could perform sedentary work for eight hours a day with restrictions.

In a report dated February 16, 1998, Dr. Topel advised that appellant was still having left-sided headaches, and that he complained of numbness down the left arm into the thumb and index finger, and bilateral arm weakness. The physician noted that the cranial nerves revealed evidence of an old Bell's palsy with synkinesias bilaterally. Dr. Topel stated:

“[Appellant] continues to show evidence for a left C5-6 radiculopathy. This has been present for a number of years now and it is unchanged both in regards to history and examination. I would feel that maximal medical improvement has been reached at the present time. He also continues to have chronic left-sided headache but no abnormalities are noted in regards to the brain with the exception of sequelae from Bell's palsy as outlined in prior notes. His diagnosis in regards to the headaches would be that of [post-traumatic] headaches, though it is

obviously much more prolonged than one would usually ascribe to this abnormality.”

With regard to appellant’s impairment of his upper extremities, Dr. Topel noted that appellant’s strength testing was excellent. He stated, however, that “there is aggravation of some of his problems with use of the left upper arm. Thus, as before, I would continue to limit movement of the left arm in regards to lifting, reaching, bending and twisting.” Dr. Topel did not offer an opinion as to whether appellant sustained a permanent partial impairment due to his work injury.

The Office subsequently referred appellant for a second opinion evaluation with Dr. Julie Wehner, a Board-certified orthopedic surgeon, who, in a report dated April 10, 1998, Dr. Wehner reviewed appellant’s medical history and reported physical findings, indicating that appellant did not have any significant complaints of pain related to his arms upon initial examination. She noted that appellant had fairly significant degenerative arthritis between C5-6 and C6-7, and to a lesser extent at C4-5, that were present at the time of the work injury on August 25, 1989.

Dr. Wehner opined that appellant’s complaints of radiculopathy were related to his preexisting degenerative arthritis and that he had no residuals from his August 25, 1989 work injury. She rated impairment of the left upper extremity at eight percent based on a sensory deficit at C6, citing page 51 of the A.M.A., *Guides*. Dr. Wehner concluded that appellant had no permanent partial impairment causally related to the work injury. She further noted that appellant’s condition of Bell’s palsy was unrelated to the work injury.

In a decision dated April 27, 1998, the Office rejected appellant’s claim for a schedule award.

Appellant subsequently requested reconsideration of his claim on May 18, 1998.

In an August 18, 1998 decision, the Office denied modification of the April 27, 1998 decision.

The Board finds that appellant is not entitled to a schedule award.

Under section 8107 of the Federal Employees’ Compensation Act³ and section 10.304 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁵

³ 5. U.S.C. § 8107.

⁴ 20 C.F.R. § 10.304.

⁵ *Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

In this case, the Board finds that there is no medical documentation to substantiate that appellant has a permanent partial impairment of a scheduled member as a result of the August 25, 1989 work injury. Appellant's treating physician, Dr. Topel, has offered no opinion on whether appellant sustained a permanent partial impairment under the A.M.A., *Guides* to a schedule member due to the August 25, 1989 work injury. Although Dr. Topel noted the "possibility" that appellant had continuing symptoms of left radiculopathy due to his work injury, the Board has held that an equivocal or speculative opinion is not sufficient to meet a claimant's burden of proof in establishing entitlement to a schedule award.⁶

Furthermore, Dr. Wehner, the Office second opinion physician, specifically concluded that appellant had no permanent impairment due to the August 25, 1989 work injury. Dr. Wehner rated appellant's left upper extremity impairment as eight percent under the A.M.A., *Guides*, but stated that the impairment was due to appellant's preexisting degenerative arthritis. She explained that appellant had significant degenerative changes on x-ray at the time of the August 25, 1989 work injury and that the nature of the injury would have caused only a temporary aggravation of appellant's symptoms. Dr. Wehner indicated that appellant's continuing arm pain and numbness associated with a left radiculopathy were causally related to degenerative arthritis and not to the work injury.

Consequently, because the medical evidence is insufficient to establish that appellant sustained a permanent partial impairment to a scheduled member as a result of his work injury, the Board finds that the Office properly denied appellant's claim for a schedule award.

The decisions of the Office of Workers' Compensation Programs dated August 18 and April 27, 1998 are hereby affirmed.

Dated, Washington, DC
December 4, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ See *Arthur P. Vilet*, 31 ECAB 366 (1979) (the Board has often held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship).