

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE A. JACKSON, JR. and DEPARTMENT OF THE AIR FORCE,
EDWARDS AIR FORCE BASE, CA

*Docket No. 03-2183; Submitted on the Record;
Issued February 12, 2004*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 13 percent permanent impairment of the right upper extremity for which he received a schedule award.

On September 8, 2000 appellant, then a 31-year-old air conditioning mechanic, filed a traumatic injury claim alleging that on September 7, 2000 he hurt his back while removing an exhaust motor. Appellant stopped work on June 11, 2001.

The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar strain, cervical strain and right ulnar nerve lesion. The Office authorized right ulnar nerve decompression surgery, which was performed on July 6, 2001. Appellant returned to work on September 17, 2001.

On June 12, 2002 appellant filed a claim for a schedule award. Appellant's claim was accompanied by a December 20, 2001 medical report from Dr. John D. Kaufman, a Board-certified orthopedic surgeon and appellant's treating physician. He noted that appellant continued to complain of pain in his cervical spine with radiation to the right upper extremity with occasional tingling and numbness sensations in the right upper extremity. Dr. Kaufman found that appellant was permanently disabled from returning to work as a serviceman for heating and air conditioning systems.

On July 1, 2002 the Office requested that an Office medical adviser review appellant's medical records and determine whether he had any permanent loss of function of his right upper extremity and the date appellant reached maximum medical improvement. In a July 15, 2002 report, Dr. Arthur S. Harris, an Office medical adviser, reviewed appellant's medical records including Dr. Kaufman's December 30, 2001 report and determined that appellant had a four percent permanent impairment of the right upper extremity. Dr. Harris found that appellant reached maximum medical improvement on December 20, 2001.

By decision dated September 30, 2002, the Office granted appellant a schedule award for a four percent permanent impairment of the right upper extremity. In a February 25, 2003 letter, appellant requested reconsideration and submitted Dr. Kaufman's October 31, 2002 report finding that he had permanent loss of use of his upper extremities.

On March 19, 2003 Dr. Harris reviewed appellant's medical records and opined that appellant had a 13 percent permanent impairment of the right upper extremity based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. In addition, Dr. Harris determined that appellant reached maximum medical improvement on October 31, 2002.

In a May 28, 2003 decision, the Office modified the September 30, 2002 schedule award to reflect that appellant had a 13 percent permanent impairment of the right upper extremity.

The Board finds that appellant does not have more than a 13 percent permanent impairment of the right upper extremity for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees who sustain 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.

Dr. Kaufman, appellant's treating physician, completed a report on October 31, 2002 providing his findings on physical examination of appellant's upper extremities. Dr. Kaufman found that appellant was in the same condition as when he was last seen in May 2002. He stated that appellant continued to have pain in his lower back, which radiated down both lower extremities intermittently to his feet. He also stated that appellant got occasional paresthesias in the lower extremities. Dr. Kaufman addressed appellant's complaints of weakness and discomfort in the right forearm, which was mostly caused by the ulnar nerve injury. He noted appellant's continued complaint of pain in the left hand along with numbness in the little and ring fingers, which were related to the ulnar nerve injury to the left upper extremity. On physical examination of appellant's right upper extremity, Dr. Kaufman found slight decreased sensation in the little finger in the flexor aspect and slight weakness in abduction of the fingers. On physical examination of appellant's left upper extremity, Dr. Kaufman reported intact sensory testing and good muscle strength. Regarding appellant's disability for work, Dr. Kaufman stated that appellant's permanent disability for heavy work was approximately 50 percent of his capacity compared to prior to his injury in activities such as, lifting, bending and stooping. Dr. Kaufman further stated that appellant's disability factors related to his upper extremities resulting in a 25 percent loss of preinjury capacity for lifting, pushing, pulling, grasping,

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

pinching, holding, torquing and performing other activities of comparable physical effort. Dr. Kaufman noted that, in addition to the medical treatment noted in his December 20, 2001 report, appellant would most likely need surgery on his left elbow for decompression of the left ulnar nerve. The Board notes that, while Dr. Kaufman provided impairment findings regarding appellant's upper extremities, he provided rating of impairment under the A.M.A., *Guides*.

Dr. Harris, the Office medical adviser, applied the physical findings provided by Dr. Kaufman to the proper tables of the A.M.A., *Guides*. Based on a review of the medical record, Dr. Harris noted the diagnoses of cervical and lumbar spine strain, cervical disc protrusion at C6-7, status post right ulnar nerve decompression on July 6, 2001 and lumbar disc protrusion at L4-5 and L5-S1 as having been established. Utilizing Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides*, Dr. Harris rated appellant's impairment as Grade 3 or a 60 percent impairment based on pain with decreased sensation which interferes with some activity of the ulnar nerve/sensory function. Based on Table 16-15, page 492, Dr. Harris determined that appellant had a seven percent impairment due to sensory deficit resulting in a four percent impairment of the right upper extremity. He noted Dr. Kaufman's finding that appellant had weakness of finger abduction, which was consistent with weakness in his ulnar innervated muscles. Dr. Harris determined that this was consistent with Grade 4 muscle strength or a 25 percent impairment, based on Table 16-11, page 484. Utilizing Table 16-15, page 492, Dr. Harris determined that appellant had a 35 percent impairment of his ulnar nerve/motor function resulting in a 9 percent impairment of the right upper extremity. Combining the 4 percent impairment for pain, which interfered with function resulting from ulnar neuropathy and 9 percent impairment for muscle weakness resulting from ulnar neuropathy, Dr. Harris concluded that appellant had a 13 percent impairment of the right upper extremity. He further concluded that this impairment was caused by the September 7, 2000 employment injury and that appellant reached maximum medical improvement on October 31, 2002, the date he was most recently evaluated by Dr. Kaufman.

The Board finds that Dr. Harris' evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 13 percent permanent impairment of the right upper extremity.

On appeal appellant contends that he sustained permanent impairment to his left upper extremity and both lower extremities. In his December 20, 2001 report, Dr. Kaufman found:

"Palpable muscle spasm in the neck and back, cervical disc protrusion, as seen on the magnetic resonance imaging (MRI) [scan] study from March 23, 2001, consistent with an injury to the upper trunk of the brachial plexus, abnormal nerve conduction velocity study from March 23, 2001, showing a bilateral cubital tunnel syndrome, and an MRI [scan] of the lumbar spine, dated June 7, 2001, showing lumbar disc protrusion and nerve root impingement."

Dr. Kaufman concluded that appellant's "present symptoms and present disability are a direct cause of his injury of September 7, 2000." Dr. Kaufman's report, however, failed to address whether appellant had any permanent impairment of the left upper extremity or to the lower extremities causally related to his September 7, 2000 employment injury. Rather, he only addressed appellant's disability due to the accepted employment injury. Further, Dr. Kaufman

did not explain how appellant's bilateral cubital tunnel syndrome was caused or contributed by the accepted employment injury.

In his October 31, 2002 report, Dr. Kaufman found that appellant had some loss of use of his left upper extremity and that he was precluded from engaging in certain physical activities. However, he did not address the extent of appellant's impairment based on the tables and protocols in the fifth edition of the A.M.A., *Guides*. In addition, he did not address how appellant's left upper extremity impairment was caused by the September 7, 2000 employment injury.

Regarding appellant's contention that he is entitled to a schedule award for his lower extremities, the record does not support his contention. None of the medical reports of record contain a diagnosis for the lower extremities or address how any permanent impairment is causally related to the September 7, 2000 employment injury.

For the reasons stated above, appellant has not established entitlement to a schedule award for either his left upper extremity or both of his lower extremities.

The May 28, 2003 and September 30, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 12, 2004

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member