United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 07-1852**
	)	**Issued: December 12, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Trenton, NJ, Employer	)	

Appearances:
Thomas Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 23, 2007 denying an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a 10 percent left arm permanent impairment, for which he received a schedule award.

FACTUAL HISTORY

The case was before the Board on a prior appeal.[1] The Board found that appellant had established a left arm condition resulting from a November 29, 1989 incident involving an explosion and fire caused by a short circuit. It was noted that appellant submitted a May 7, 1997 report from Dr. Ronald Potash, a surgeon, opining that he had a 27 percent left arm permanent

[1] Docket No. 00-1795 (issued October 12, 2001).

impairment. The case was remanded for further development with respect to a schedule award for the left arm.[2]

Appellant was referred to Dr. Richard Bennett, a neurologist, for a second opinion examination. In a report dated December 17, 2001, Dr. Bennett opined that there was no evidence of a peripheral neuropathy in the left arm and no evidence of any permanent impairment. By decision dated December 13, 2002, an Office hearing representative set aside a January 18, 2002 Office decision and remanded the case for resolution of a conflict between Dr. Potash and Dr. Bennett.

The Office initially referred appellant to Dr. Edgar Kenton, a Board-certified neurologist. Based on Dr. Kenton's reports dated May 23 and December 15, 2003 and the review of an Office medical adviser, a schedule award was issued on April 7, 2004 for a 10 percent permanent impairment to the left arm. The period of the award was 31.20 weeks from December 15, 2003.

By decision dated November 5, 2004, an Office hearing representative remanded the case on the grounds that Dr. Kenton had not properly resolved the conflict. The hearing representative indicated that the conflict was to be resolved by the referee physician, not the Office medical adviser.

The record indicates that the Office was unable to secure a supplemental report from Dr. Kenton. Dr. Tim Lachman, a Board-certified neurologist, was then selected as a referee examiner. In a report dated February 22, 2006, he provided a history and results on examination. With respect to permanent impairment, Dr. Lachman found a five percent impairment based on "strength left arm," identifying page 510 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and Table 16-11. In addition, Dr. Lachman reported a four percent impairment based on "sensation left index finger" and he referred to page 448 and Table 16-7 of the A.M.A., *Guides*. He concluded that appellant had a nine percent left arm impairment or a five percent whole person impairment.

An Office medical adviser reviewed the evidence in a July 16, 2006 report. He noted that page 510 of the A.M.A., *Guides* is Table 16-35 and "Dr. Lachman selected five percent which is appropriate for this chart." The medical adviser also noted that Dr. Lachman interpreted Table 16-7 to find a four percent left arm impairment.

By decision dated July 31, 2006, the Office determined that appellant was not entitled to an additional schedule award for the left arm. It found that the weight of the evidence was represented by Dr. Lachman.

Appellant requested an oral hearing before an Office hearing representative which was held on December 11, 2006. In a decision dated February 23, 2007, the hearing representative affirmed the July 31, 2006 decision.

[2] The Board also affirmed a November 24, 1997 schedule award decision for a 19 percent permanent impairment to the right arm.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[3] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[4]

ANALYSIS

The Office found that Dr. Lachman, the physician selected as a referee physician to resolve a conflict under section 8123(a) of the Act,[5] provided a rationalized medical opinion that represented the weight of the evidence. Dr. Lachman, however, provided no explanation as to how he applied the referenced tables in the A.M.A., *Guides.*

The referee physician cited page 510 and Table 16-11 with respect to a strength impairment. Table 16-11 is found at page 484 and provides a grading classification based on the identification of the affected nerves and the maximum impairment under Tables 16-13 through 16-15.[6] The Table on page 510 is Table 16-35, which provides arm impairments for strength deficits "from musculoskeletal disorders based on manual muscle testing of individual units of motion of the shoulder and elbow."[7] As the A.M.A., *Guides* explains, the impairment ratings are derived by multiplying the maximum relative value of each unit of motion by the percentage of severity of strength deficit found by manual muscle testing. To apply the table the physician must identify the shoulder or the elbow, the motion involved and then determine the impairment based on the severity of the deficit, either 5 to 25 percent or 30 to 50 percent. To the extent that Dr. Lachman was applying Table 16-35, he provided no explanation as to how the table was applied. While the Office medical adviser briefly stated five percent was "appropriate" under Table 16-35, Dr. Lachman did not indicate whether he was using the shoulder or the elbow, what motion was involved or the severity of the deficit. The Board finds that Dr. Lachman did not provide an adequate explanation as to how he determined a strength deficit impairment.

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[3] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[4] *A. George Lampo*, 45 ECAB 441 (1994).

[5] 5 U.S.C. § 8123(a) provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict. There was a disagreement in this case between Dr. Bennett and Dr. Potash regarding a left arm permanent impairment.

[6] A.M.A., *Guides* 484, Table 16-11.

[7] *Id.* at 510, Table 16-35. The table indicates that the severity of the deficit is derived from the same principles used in Table 16-11.

With respect to sensory deficit in the left index finger, Dr. Lachman referred to Table 16-7, which provides digit impairments for sensory losses in the index, middle and ring fingers.[8] Again, he did not provide any explanation as to how the table was applied. It is, as noted, a table that provides impairment ratings for the finger and, therefore, Tables 16-1 and 16-2 would have to be used to convert the impairment to an upper extremity impairment.[9] Table 16-7 requires the physician to identify whether the sensory loss is transverse or longitudinal, total or partial, involves the ulnar or radial nerves (or both) and the percent of digit length affected. Dr. Lachman did not provide any relevant explanation as to application of Table 16-7.

The Board finds that Dr. Lachman did not provide a rationalized medical opinion that properly resolves the issue as to the degree of impairment to appellant's left arm. When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in his original report.[10] The case will be remanded to the Office to secure a rationalized opinion on the issue presented. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The medical evidence from Dr. Lachman is of diminished probative value on the issue presented and is not sufficient to resolve the conflict in the medical evidence.

[8] *Id. at* 448, Table 16-7.

[9] *Id. at* 438, 439.

[10] *Raymond A. Fondots*, 53 ECAB 637 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 23, 2007 and July 31, 2006 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 12, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board