

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER SCHRIBER and U.S. POSTAL SERVICE,
CLAYTON STATION, Clayton, Mo.

*Docket No. 96-761; Submitted on the Record;
Issued April 10, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to a schedule award for a permanent partial impairment of his right elbow.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that he is entitled to a schedule award for a permanent partial impairment of his right elbow.

On December 5, 1986 appellant, then a letter carrier, filed a claim for an occupational disease (Form CA-2) alleging that on September 30, 1986 he first became aware that his arm condition was caused or aggravated by his employment. Appellant stopped work on September 30, 1986. Appellant returned to light-duty work on June 3, 1987 and retired from the employing establishment on July 29, 1988.

On March 13, 1987 the Office of Workers' Compensation Programs accepted appellant's claim for right lateral epicondylitis. The Office approved appellant's surgery on his right elbow which took place on April 1, 1987.

On August 6, 1991 appellant filed a schedule award (Form CA-7).

On August 9, 1991 appellant filed a recurrence claim (Form CA-2a) alleging that his right arm condition had not changed since the original injury and that he was limited in what he could do.¹

By letter dated May 18, 1992, the Office advised Dr. Shale M. Rifkin, a Board-certified surgeon and appellant's treating physician, to determine the extent of impairment of appellant's

¹ The record does not indicate that the Office has rendered a decision regarding appellant's recurrence claim. Thus, this claim is not currently before the Board on this appeal. 20 C.F.R. § 501.2(c).

right elbow based on the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Rifkin submitted a March 8, 1994 medical report.

On November 13, 1992 the Office referred appellant, along with a statement of accepted facts, medical records and a list of specific questions, to Dr. J.K. Smelz, a Board-certified physiatrist, for a second opinion examination. The Office instructed Dr. Smelz to determine an impairment rating of appellant's right elbow based on the third edition of the A.M.A., *Guides*. Dr. Smelz submitted a December 15, 1992 medical report and work restriction evaluation.

By decision dated March 19, 1993, the Office found the evidence of record insufficient to establish that appellant was entitled to a schedule award.

In an April 2, 1993 letter, appellant requested an oral hearing before an Office representative.

By decision dated June 16, 1994, the hearing representative affirmed the Office's March 19, 1993 decision. The hearing representative found that the weight of the medical opinion evidence rested with that of Dr. Smelz.

In a letter dated July 7, 1994, appellant, through his representative, requested reconsideration of the hearing representative's decision accompanied by medical evidence. Appellant stated that the Office had accepted his claim for a right shoulder condition because it authorized Dr. William B. Strecker, a Board-certified orthopedic surgeon, to treat him for such condition by letter dated July 30, 1987.

By decision dated August 10, 1994, the Office denied appellant's request for reconsideration, without review of the merits of the claim, on the grounds that the evidence submitted in support of the request was cumulative in nature. The Office found that it had not accepted appellant's claim for a right shoulder condition based on its authorization for treatment of such condition and that the medical evidence of record was insufficient to establish that appellant was entitled to a schedule award for his right shoulder condition.

In an October 23, 1994 letter, appellant requested clarification as to why his right shoulder condition was not accepted by the Office in light of the Office's payment for the treatment of his right shoulder condition.

In a February 1, 1995 letter, appellant, through his representative, requested reconsideration of the Office's August 10, 1994 decision and contended that his right shoulder condition should be accepted by the Office. Appellant's request was accompanied by correspondence from the Office and medical evidence.

By decision dated February 8, 1995, the Office denied appellant's request for reconsideration without a review of the merits of the claim on the grounds that the evidence submitted with his request neither raised substantive legal questions nor constituted new and relevant evidence.

Appellant appealed the hearing representative's June 16, 1994 decision to the Board accompanied by a March 16, 1995 letter from his representative requesting that the Office reconsider its February 8, 1995 decision, medical evidence and correspondence with the Office.²

In an order dated October 4, 1995, the Board granted the Office's motion to dismiss appellant's appeal on the basis that the Board did not have concurrent jurisdiction over an identical issue in a claim. On remand, the Board directed the Office to further develop appellant's claim and to issue a decision based on a merit review of the claim.

By decision dated December 1, 1995, the Office denied appellant's request for modification based on a merit review of the claim.

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁵ However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁶

In response to the Office's May 18, 1992 letter requesting an impairment rating for appellant's right elbow, Dr. Rifkin submitted a March 8, 1994 medical report revealing that he had not examined appellant since November 4, 1989 and that his findings were contained in his November 14, 1989 medical report.⁷ Dr. Rifkin opined that, based on that report and the third edition of the A.M.A., *Guides*, appellant reached maximum medical improvement on November 4, 1989. Dr. Rifkin further opined that, based on the A.M.A., *Guides*, appellant had an 11 percent impairment of the right shoulder. Regarding appellant's right elbow, Dr. Rifkin

² In his March 16, 1995 letter, appellant contended that there was a conflict in the medical opinion evidence between Dr. Strecker and Dr. Smelz. Appellant also contended that his right shoulder condition was caused by his right elbow condition.

³ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.304.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Thomas D. Gauthier*, 34 ECAB 1060 (1983).

⁷ In his November 14, 1989 medical report, Dr. Rifkin noted a history of appellant's employment injury and medical treatment, and his findings on physical examination of appellant's right shoulder and arm. Dr. Rifkin diagnosed post-traumatic and symptomatic internal derangement of the right shoulder and post-traumatic, post surgical and symptomatic internal derangement of the right elbow. Dr. Rifkin opined that appellant had a 30 percent permanent disability of his right upper extremity as rated at his shoulder due to the work-related shoulder and elbow injury with the repetitious activities dating back to 1955 and September 1966.

opined that appellant had no loss of range of movement of the right elbow which resulted in a zero percent impairment. Dr. Rifkin concluded that the 11 percent disability rating of the right upper extremity was rated on the shoulder and was causally related to the September 1986 employment injury. The Board finds that Dr. Rifkin's opinion is of limited probative value because the Office has not accepted appellant's claim for a right shoulder condition, rather, the Office has only accepted appellant's claim for right lateral epicondylitis of the elbow. Further, Dr. Rifkin did not provide any medical rationale for his conclusion that appellant's right shoulder condition was causally related to the September 30, 1986 employment injury.

The record reveals the September 17, 1993 medical report of Dr. Strecker. In his report, Dr. Strecker noted a history of his medical treatment of appellant, and his findings on physical examination of appellant's shoulder and elbow. Dr. Strecker concluded that appellant's condition was permanent, that appellant had reached maximum medical recovery and that appellant had a 20 percent permanent disability of the right upper extremity which equated to a 12 percent permanent impairment of the whole person. Dr. Strecker's February 27, 1995 supplemental report revealed that his impairment rating was based upon the A.M.A., *Guides* and that this disability was related to appellant's employment. Dr. Strecker's opinion is of limited probative value inasmuch as he failed to explain how he applied the standards of the A.M.A., *Guides* in reaching his determination and to provide any medical rationale for his conclusion. Further, the Office has not accepted appellant's claim for a right shoulder condition.

The June 23, 1987 medical report of Dr. Ronald E. Hoffman, an orthopedist, revealed a history of appellant's September 30, 1986 employment injury and medical treatment, and his findings on physical and objective examination. Dr. Hoffman opined that appellant had tennis elbow of the right elbow and adhesive capsulitis of the right shoulder. Dr. Hoffman's July 17, 1987 medical report indicated that appellant's right shoulder condition was directly related to appellant's right lateral epicondylitis and that appellant's disability was a result of his right shoulder and elbow conditions. The record reveals an August 13, 1987 x-ray report from Dr. A.H. McCown, a Board-certified radiologist, concerning appellant's right shoulder and elbow. Regarding appellant's right elbow, Dr. McCown diagnosed minimal subperiosteal demineralization of the lateral aspect of the distal right humerus, and stated that the x-ray was otherwise negative and that there was no evidence of a fracture. Regarding appellant's right shoulder, Dr. McCown diagnosed degenerative changes of the right shoulder joint with calcific tendinitis adjacent to the greater tuberosity. The March 28, 1988 medical report of Dr. Dale Doerr, a Board-certified orthopedic surgeon, revealed a history of appellant's September 30, 1986 employment injury and medical treatment, and his findings on physical examination of appellant's right shoulder and elbow. Dr. Doerr concluded that appellant was totally disabled for his position as a letter carrier and noted appellant's physical restrictions. In a June 29, 1992 medical report, Dr. Jerry L. Thomas, a Board-certified orthopedic surgeon, indicated the medical treatment of appellant's right elbow and his findings on physical examination of appellant's right shoulder and elbow. Dr. Thomas diagnosed calcific tendinitis of the supraspinatus tendon with some arthritis of the acromioclavicular joint. Dr. Thomas recommended future medical treatment. The Board finds that these reports are of limited probative value because they failed to provide an impairment rating and an explanation of how their assessment of permanent

impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.⁸

A March 3, 1987 medical report signed by Joanne McCarron from the office of Dr. Karl Wolf, an Office medical adviser, revealed that appellant's right arm condition was caused by his employment as a letter carrier. The record does not reveal that Ms. McCarron is a physician. Any medical evidence relied upon by the Office to resolve an issue must be signed by a physician.⁹ Therefore, the Board finds that the report from Dr. Wolf's office does not constitute competent medical evidence.

In a December 15, 1992 medical report, Dr. Smelz noted a history of appellant's employment injury, medical treatment and a review of the medical records. On physical examination, Dr. Smelz stated:

"Today [appellant] complained of constant pain in his shoulder and elbow. On observation of spontaneous behavior, there were no functional deficits noted.

"No atrophy or fasciculations were noted in the right upper extremity or the shoulder girdle area.

"Range of motion of the right elbow was within normal limits, both actively and passively, with flexion, extension, pronation and supposition. There was no crepitus noted during these movements.

"Range of motion of the right shoulder was also within normal limits, when the patient was exhorted constantly. With overhead elevation, [appellant] was observed to forcefully contract the latissimus dorsi, which made it more difficult to completely overhead elevate; when this was pointed out to him, he was able to relax the muscle, and full range was achieved. There was a great deal of overt pain behavior during the examination. No crepitus was appreciated during movement in any plane of the shoulder, and shoulder/scapular rhythm was maintained. Strength was within normal limits in all major muscle groups of the right upper extremity.

"Sensation was intact to light touch throughout the right upper extremity. Deep tendon reflexes were present and equal bilaterally at the biceps and triceps tendons.

"Palpation revealed complaints of minimal tenderness over the right lateral epicondyle and over the anterior shoulder capsule.

"X-rays were also taken at this time of the right shoulder and right elbow. No abnormalities were noted by the radiologist."

⁸ *Annette M. Dent*, 44 ECAB 403, 409 (1993).

⁹ *James A. Long*, 40 ECAB 538, 541 (1989).

Dr. Smelz opined that appellant had status post right lateral epicondylitis with minimal right epicondylectomy and release of the extensor carpi radialis tendons by history, prior adhesive capsulitis of the right shoulder by history, and present complaints of persistent pain in the right shoulder and elbow with no objective findings on physical examination. Dr. Smelz further opined that appellant had reached maximum medical improvement since there were no findings on physical examination, but that he could not determine the date of maximum medical improvement based on the history made available to him. Dr. Smelz also opined that there were essentially no objective findings on physical examination or according to the radiologist's review of the films and that appellant's complaints were for chronic pain with no clear etiology. Dr. Smelz concluded that appellant had no impairment based on the third edition of the A.M.A., *Guides*. Dr. Smelz explained how he reached his conclusion that appellant had no impairment rating based on the standards of the A.M.A., *Guides* and provided medical rationale in support of his opinion. Therefore, the Board finds that the Office properly relied on Dr. Smelz' report in reaching its determination that appellant had no impairment rating of the right elbow.

Regarding appellant's contention that the Office accepted his right shoulder condition because it authorized Dr. Strecker to render medical treatment for such condition is without merit. The Board has long held that the mere fact that the Office authorized and paid for medical treatment does not establish that the condition for which the employee received treatment was employment related.¹⁰ Therefore, the mere fact that the Office authorized medical treatment of appellant's right shoulder condition does not establish that the Office accepted that the right shoulder condition was work related or that any period of disability was due to a work-related condition. Additionally, there is no rationalized medical evidence of record establishing a causal relationship between appellant's right shoulder condition and the September 30, 1986 employment injury.

¹⁰ *James F. Aue*, 25 ECAB 151, 153 (1974); *Sophia Maxim (Edward Gerard Maxim)*, 10 ECAB 61, 68 (1958); *Norman F. Schwenker*, 9 ECAB 187, 188 (1956).

The December 1 and February 8, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
April 10, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member