U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM R. JONES and DEPARTMENT OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE, MEAT GRADING BRANCH, Joslin, Ill.

Docket No. 96-347; Submitted on the Record;
Issued July 15, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, BRADLEY T. KNOTT

The issue is whether appellant had more than a 15 percent permanent impairment of the left upper extremity or more than a 10 percent permanent impairment of the right upper extremity for which he received a schedule award.

On July 1, 1992 appellant, then a 42-year-old agricultural commodity meat grader, filed a claim for carpal tunnel syndrome of the left wrist which he attributed to the repetitive motion involved in stamping meat.

On December 10, 1992 appellant filed a claim for an injury to his left elbow occurring on December 8, 1992.

On September 15, 1993 appellant filed a claim for carpal tunnel syndrome of the right wrist which he attributed to the repetitive motion involved in stamping meat.

By decision dated February 19, 1993, the Office of Workers' Compensation Programs accepted appellant's claim for left lateral epicondylitis and elbow strain.

On July 21, 1993 appellant underwent a carpal tunnel release of the carpal ligament of the left wrist.

In an undated letter, the Office accepted that appellant had sustained left carpal tunnel syndrome.

In a report dated November 12, 1993, Dr. Richard L. Kreiter, a Board-certified orthopedic surgeon, stated that appellant had bilateral carpal tunnel syndrome and that he had undergone a left carpal tunnel release with good result. He stated that appellant had increased symptoms on the right side and had tried various conservative approaches but he believed that appellant was a candidate in the future for a right carpal tunnel release.

In a letter dated March 9, 1994, Dr. Kreiter stated his opinion that appellant's carpal tunnel syndrome had either been accelerated or precipitated by factors of his employment. He noted that appellant had done well after a carpal tunnel release on the left hand and that it was reasonable to proceed with the carpal tunnel release on the right hand.

On April 7, 1994 the Office accepted that appellant sustained right carpal tunnel syndrome in the performance of duty.

On April 27, 1994 appellant underwent a carpal tunnel release of the right wrist.

In a form report dated May 6, 1994, Dr. Kreiter diagnosed lateral epicondylitis of the left elbow and bilateral carpal tunnel syndrome. He gave as the date of injury June 14, 1993 and indicated by checking the block marked "yes" that the condition was causally related to appellant's employment. He indicated that appellant had been totally disabled from June 14, 1993 to the present.

In a claim form dated August 28, 1994, appellant claimed compensation benefits commencing on December 1, 1993 and continuing.

In a report dated October 3, 1994, Dr. Myron B. Stachniw, a Board-certified orthopedic surgeon, related that appellant was complaining of weakness, numbness, tingling and nocturnal awakening in both hands and that he underwent a left carpal tunnel release on July 21, 1993 but had only a partial recovery and that he continued to have pain and weakness in his hands. He stated that appellant subsequently underwent a right carpal tunnel release but was still complaining of pain on a daily basis. Dr. Stachniw related that appellant had weakness in his hands and reported that any type of repetitive use of his hands would bring on pain and that he had nocturnal awakening. He provided findings on examination and diagnosed bilateral carpal tunnel syndrome. Dr. Stachniw stated his opinion that appellant would have been totally disabled for a period of six weeks following each surgical procedure. He stated that appellant's present physical limitations resulting from the carpal tunnel condition would be those of not using any vibrating instruments or performing any repeated flexion and extension of the wrist.

In a letter dated October 17, 1994, Dr. Stachniw stated his opinion that appellant had a 15 percent permanent impairment of each upper extremity but provided no findings in support of his conclusion.

In a work capacity evaluation dated December 4, 1994, Dr. Stachniw indicated that appellant could work for eight hours per day with certain restrictions.

In a report dated February 22, 1995, Dr. Kreiter noted that appellant was having increased pain in his palms and weakness in his arms around the lateral aspect of the elbows. He indicated that he had full range of motion but was tender over the lateral aspect of the condyles. In accompanying notes, Dr. Kreiter noted that appellant had a complaint of painful scars on his wrists and lateral elbow pain but normal range of motion. He noted no measurable atrophy and some weakness secondary to his "tennis elbow" symptoms.

In undated notes, Dr. Kreiter indicated that appellant had moderate pain over the lateral epicondyles which caused loss of function of both the elbows but no sensory loss. He indicated that range of motion of the elbows was normal. Dr. Kreiter indicated that appellant had some thenar atrophy and pain in both wrists but that range of motion was normal.

In a report dated March 8, 1995, Dr. Kreiter related that appellant had undergone a carpal tunnel release on the left hand on July 21, 1993 and on the right on April 27, 1994 but that he continued to have some complaints of pain and was unable to perform many activities that he could perform years previously. He stated that it was difficult to provide an impairment rating of appellant but that he had no more than a 5 to 10 percent permanent impairment of each upper extremity as a result of his carpal tunnel condition and of his epicondylitis condition.

In a memorandum dated May 25, 1995, Dr. Janet Elliot, a physician specializing in occupational and preventive medicine, and an Office medical consultant, reviewed the findings in Dr. Kreiter's reports which noted that appellant complained of weakness and pain with activity and had tenderness over the lateral epicondyle of the left arm but no atrophy or diminished range of motion in the arms. She determined, based on Table 16 at page 57 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, 1993, that appellant had a 5 percent permanent impairment of the left arm due to weakness and pain of the lateral epicondyle, a 10 percent impairment of the left arm due to median nerve entrapment of the wrist with residual symptoms, and a 10 percent impairment of the right arm due to median nerve entrapment of the wrist with residual symptoms.

By decision dated July 18, 1995, the Office denied appellant's claim for compensation benefits for lost wages on the grounds that the evidence or record failed to establish that he had any continuing disability causally related to his accepted work-related conditions of left lateral epicondylitis and bilateral carpal tunnel syndrome. The Office noted that medical treatment of these accepted conditions would continue.

By decision dated August 2, 1995, the Office granted appellant a schedule award for a 15 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity.

The Board finds that appellant sustained no more than a 15 percent permanent impairment of the left upper extremity and a 10 percent permanent impairment of the right upper extremity for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,[2] including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[3]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

Section 8107 of the 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.[4] 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 a standard for evaluating schedule losses and the Board has concurred in such adoption.[5]

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member of function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."[6] This description must be in sufficient detail so that the claims examiner and other reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[7]

In a memorandum dated May 25, 1995, Dr. Elliot, a physician specializing in occupational and preventive medicine, and an Office medical consultant, reviewed the findings in Dr. Kreiter's reports which noted that appellant complained of weakness and pain with activity and had tenderness over the lateral epicondyle of the left arm but no atrophy or diminished range of motion in the arms. She determined, based on Table 16 at page 57 of the A.M.A., *Guides* Fourth Edition, 1993, that appellant had a 5 percent permanent impairment of the left arm due to weakness and pain of the lateral epicondyle, a 10 percent impairment of the left arm due to median nerve entrapment of the wrist with residual symptoms, and a 10 percent impairment of the right arm due to median nerve entrapment of the wrist with residual symptoms.

As the report of Dr. Elliot provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[8]

The reports of Dr. Stachniw do not establish that appellant sustained more than a 15 percent permanent impairment of the left upper extremity or more than a 10 percent permanent impairment of the right upper extremity.

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[4] 5 U.S.C. § 8107(a).

[5] *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[6] Federal (FECA) Procedure Manual, Part -- 2 Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); *see John H. Smith*, 41 ECAB 444, 448 (1990).

[7] *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

[8] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

In a letter dated October 17, 1994, Dr. Stachniw stated his opinion that appellant had a 15 percent permanent impairment of each upper extremity but provided no findings in support of his conclusion. The opinion of Dr. Stachniw is also of limited probative value in that he failed to provide an explanation of how his 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.[9]

[9] *See James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

The decision of the Office of Workers' Compensation Programs dated August 2, 1995 is affirmed.

Dated, Washington, D.C.
July 15, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member