U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOYD T. SKAGGS and TENNESSEE VALLEY AUTHORITY, BROWNS FERRY NUCLEAR PLANT, Decatur, Ala.

Docket No. 96-13; Submitted on the Record;
Issued March 5, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant's May 27, 1989 employment injury caused permanent impairment to his right upper extremity, entitling him to a schedule award.

The Board has duly reviewed the record on appeal and finds that this case is not in posture for a determination of appellant's entitlement.

In his May 26, 1994 report, Dr. Benjamin F. Hatchett, Jr., an orthopedic surgeon and referral physician for the Office of Workers' Compensation Programs, stated that appellant had no loss of motion of the shoulder or loss of muscles mass. He noted, however, that appellant had previously been given an impairment rating based on his pain level: "It was indicated as being 5 percent of the extremity. I would not dispute this evaluation."

The Office sought clarification. On July13, 1994 the Office requested that Dr. Hatchett complete the forms sent to him using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

Dr. Hatchett completed the forms and recommended an impairment rating of zero percent of the right upper extremity, but he added, "See letter." He added the same comment to questions regarding impairment due to sensory deficit, pain or discomfort.

In its June 20, 1995 decision, the Office affirmed the denial of appellant's claim for a schedule award. The Office noted that Dr. Hatchett was unable to support his opinion for an impairment rating based on pain.

The Board finds that Dr. Hatchett's opinion on the impairment rating for pain is cursory, inconsistent, and unexplained and is therefore insufficient to resolve the question asked of him. He reported initially, without elaboration, that he would not dispute the 5 percent rating previously given. Ask to clarify, he recommended a rating of zero percent by completing an Office form but noted, "See letter," ostensibly referring to his initial report. This did not clarify

his opinion. Where different reports from the same physician contain unexplained inconsistencies, the physician's reports are of diminished probative value.[1]

The report of examination in schedule award cases must always include a detailed description of the impairment, including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment.[2] Because Dr. Hatchett failed to provide a detailed description of appellant's strength or pain in the right upper extremity, and because he failed to follow the grading scheme and procedure set forth in the A.M.A., *Guides* for determining a brachial plexus-related impairment,[3] his report is insufficient to allow a proper determination of appellant's entitlement to a schedule award.

Further, when the Office referred appellant to Dr. Hatchett, it advised him that the injury that occurred on May 27, 1994 resulted in a diagnosed condition of cervical sprain. The Office underlined the condition for emphasis. The Office also provided Dr. Hatchett with a statement of accepted facts, which indicated that the Office had accepted that appellant sustained a compensable cervical sprain and abrasion of the nose as a result of the injury. The record also establishes that the Office has accepted that appellant's brachial plexus condition of the right arm was causally related to his employment injury of May 27, 1989. The Board finds that this was a significant omission by the Office as Dr. Hatchett was to use the statement of accepted facts as a frame of reference for his opinion on whether appellant sustained a permanent impairment of the right upper extremity as a result of the May 27, 1989 employment injury.[4]

For the reasons given above, the Board will set aside the Office's June 20, 1995 decision and remand the case for proper development of the medical evidence and an appropriate final decision on appellant's claim for a schedule award.

[1] *Mary S. Brock*, 40 ECAB 461 (1989).

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c)(1) (March 1995).

[3] American Medical Association, *Guides to the Evaluation of Permanent Impairment* 52-53 (1993).

[4] *See Daniel J. Overfield*, 42 ECAB 718 (1991) (holding that medical opinions based on an incomplete or inaccurate factual background are entitled to little probative value); *see also Liliana M. Martinez*, 42 ECAB 517 (1991) (holding that the opinion of an impartial medical specialist based upon an incomplete statement of accepted facts was not entitled to special weight because the specialist did not have a proper factual and medical background upon which to base his opinion).

The June 20, 1995 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
March 5, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member