

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUAN D. JEFFERSON and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 98-1429; Submitted on the Record;
Issued November 1, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has more than a five percent permanent impairment of each arm for which he received a schedule award.

On July 3, 1996 appellant, then a 34-year-old letter carrier, filed a notice of traumatic injury alleging that he injured the left side of his neck, his shoulder and back on July 2, 1996 in the course of his federal employment. On September 23, 1996 the Office of Workers' Compensation Programs accepted the claim for a left shoulder strain/sprain and a cervical strain and appropriate compensation was awarded.

On October 10, 1996 the Office referred appellant to Dr. Allan Halden, a Board-certified orthopedic surgeon, for a second opinion examination. On November 6, 1996 Dr. Halden noted that appellant reported pain in the cervical area radiating out towards the right shoulder and arm. He also noted numbness in the right hand without weakness. He noted that his compression test produced pain in the right arm and that there was tenderness in the shoulders, more pronounced on the right. He noted pain during his range of motion testing of the shoulders in the cervical area. Following magnetic resonance imaging (MRI) scan, Dr. Halden diagnosed a ruptured cervical disc at the C3-4 level with mild right C4 radiculopathy and mild degenerative changes at C6-7.

On December 2, 1996 Dr. Ronald F. Shallat indicated that appellant complained of some right arm radicular radiation which was exacerbated by his July 2, 1996 injury. He noted limitation of motion and radiation into the right arm and hand and paresthesiae in the entire right hand. He also noted milder symptoms of radiation on the left side. Dr. Shallat's neurological examination revealed halting weakness of all muscle groups in the right upper extremity as a result of splinting due to pain. His x-rays revealed mild disc space narrowing at C6-7 and his MRI scan revealed a small disc protrusion at C3-4 with some spondylotic changes. Dr. Shallat diagnosed cervical spondylosis.

On January 6, 1997 Dr. Michael K. Park, a Board-certified orthopedic surgeon, evaluated appellant for neck pain and paresthesia in the right upper extremity. He noted tingling numbness in the right hand and some pain in the medial aspect of the right arm. His examination revealed tenderness and tightness in the splenius an upper trapezius muscle. Dr. Park diagnosed right upper trapezius and cervical paraspinal muscle pain secondary to chronic repetitive strain. He stated that appellant's parathesia in the right upper extremity stemmed from a tight thoracic outlet area. He stated that he did not believe that the disc at C3-4 caused these problems.

On March 24, 1997 Dr. Park indicated that his electromyography of appellant's right upper extremity did not show evidence for radiculopathy. He noted, however, that pain persisted in the right upper trapezius.

On June 5, 1997 Dr. Stephen Sommer, appellant's treating physician and a Board-certified general practitioner, indicated that appellant had reached maximum medical improvement.

On July 15, 1997 appellant requested a schedule award.

On August 15, 1997 Dr. Sommer indicated that appellant's C3, C4, C5 and C6 nerve branches were affected and caused impairment in the upper extremity.

The Office subsequently referred the case to an Office medical adviser to render an opinion on the extent of appellant's permanent impairment to his upper extremities due to his accepted employment injury.

On November 5, 1997 the Office medical adviser indicated that for the purposes of determining the extent of appellant's permanent impairment, "I have used the information within the medical reports of all treating physicians and, in particular, most recently Dr. Michael Park and Dr. Sommer." The Office medical adviser then indicated that it did not appear that appellant had any significant muscle weakness or sensory deficit. He did note pain in the upper extremities due to bilateral C4 radiculopathy which he rated pursuant to Table 13, page 51, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). He found that as a result of cervical radiculopathy resulting from disc herniation at C3-4 appellant had a five percent impairment of each upper extremity.

By decision dated November 18, 1997, the Office awarded appellant a schedule award for a five percent impairment to each upper extremity.

On December 10, 1997 appellant requested reconsideration.

In support, appellant submitted a December 10, 1997 report from Dr. Sommer indicating that appellant had a 25 percent permanent impairment of his upper extremities. Dr. Sommer supported his conclusion by listing activities that appellant was now restricted from doing.

On January 6, 1998 the Office reviewed the merits of the claim and found that the medical evidence supported no more than the previously calculated five percent impairment of each upper extremity.

The Board finds that the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulation set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.

In the present case, the Office relied on the opinion of its medical adviser in determining that appellant had a five percent permanent impairment in each upper extremity. The Office medical adviser indicated that for the purposes of determining the extent of appellant's permanent impairment, "I have used the information within the medical reports of all treating physicians and, in particular, most recently Dr. Michael Park and Dr. Sommer." An Office medical adviser, however, may not selectively choose the impairment findings he favors with respect to a specific organ or member of the body from different medical reports of several physicians in calculating a schedule award. The proper procedure requires obtaining or selecting a single medical report regarding the organ or member of the body that contains all of the essential information such as ranges of motion, pain, loss of strength, etc. The medical adviser must then give his reasons for selecting a specific medical report over the other medical reports of record. The case herein must be remanded for further review by an Office medical adviser and such further medical development as warranted followed by a *de novo* decision.¹

¹ See *Louis Jackson, Sr.*, 47 ECAB 426 (1996); *Robert N. Snow*, 33 ECAB 656 (1982).

The decisions of the Office of Workers' Compensation Programs dated January 6, 1998 and November 18, 1997 are hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, D.C.
November 1, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member