

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of JOSEPH R. LANCASTER and DEPARTMENT OF THE NAVY,  
MILITARY SEALIFT COMMAND PACIFIC, Oakland, CA

*Docket No. 00-2619; Submitted on the Record;  
Issued January 10, 2003*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits for his accepted condition of C7, C8 thoracic outlet syndrome; and (2) whether appellant has more than 10 percent permanent impairment of his right upper extremity for which he received a schedule award.

Appellant a 55-year-old merchant seaman, filed a notice of occupational disease on February 3, 1993 alleging that he developed pain in his right shoulder causing loss of strength and loss of range of motion in April 1991. He first related this condition to his employment on December 17, 1991 and attributed his condition to line handling, climbing ladders and required periodic drills. The Office accepted appellant's claim for thoracic outlet syndrome C7, C8, right shoulder and right rotator cuff tear. The Office entered appellant on the periodic rolls on January 30, 1995.

Appellant filed a claim for recurrence of disability on August 6, 1998 alleging that he sustained a recurrence of disability due to an August 1989 employment injury to his left shoulder. The Office denied this claim by decision dated December 15, 1998. By decision dated August 9, 1999, the Office denied appellant's claim for a left shoulder injury causally related to his employment.<sup>1</sup>

In a letter dated May 4, 1999, the Office proposed to reduce appellant's compensation benefits based on his capacity to earn wages in the constructed position of surveillance system monitor. Appellant disagreed with this proposal on June 2, 1999. By decision dated

---

<sup>1</sup> As the Office issued these decisions more than one year before the date of appeal to the Board, the Board may not consider them on appeal. 20 C.F.R. § 501.3(d)(2).

November 8, 1999, the Office reduced appellant's compensation based on his wage-earning capacity in the position of surveillance system monitor.<sup>2</sup>

In a letter dated November 18, 1999, the Office proposed to terminate appellant's compensation benefits for the accepted condition of thoracic outlet syndrome. By decision dated December 29, 1999, the Office finalized this decision.<sup>3</sup>

In a decision dated January 7, 2000, the Office granted appellant a schedule award for 10 percent permanent impairment of his right upper extremity.

Appellant requested reconsideration on July 6, 2000. By decision dated July 12, 2000, the Office declined to reopen the November 8 and December 29, 1999 decisions for review of the merits.<sup>4</sup>

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for the accepted condition of thoracic outlet syndrome C7, C8.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>5</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>6</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>8</sup>

In this case, the Office initially accepted appellant's claim for thoracic outlet syndrome C7, C8 as well as right rotator cuff tear. Appellant's attending physician, Dr. James S. Sarkisian, an orthopedic surgeon, completed a report on May 27, 1997 and diagnosed chronic radiculopathy and thoracic outlet syndrome, persistent, as well as impingement syndrome right shoulder which had resolved.

---

<sup>2</sup> The Board addressed this aspect of appellant's claim in a decision dated August 3, 2001 in Docket Number 00-2618 and found that the wage-earning capacity determination was not in posture for decision due to an unresolved conflict of medical opinion evidence.

<sup>3</sup> The Office noted that appellant would continue to receive compensation for his accepted right shoulder condition and medical benefits for treatment of his right shoulder and right rotator cuff condition.

<sup>4</sup> The Board found that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits in its August 3, 2001 decision, Docket Number 00-2618.

<sup>5</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>6</sup> *Id.*

<sup>7</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>8</sup> *Id.*

The Office referred appellant for a second opinion evaluation with Dr. J. Pierce Conaty, a Board-certified orthopedic surgeon. In a report dated June 6, 1999, Dr. Conaty reviewed appellant's history of injury and medical treatment. He performed a physical examination and diagnosed status postoperative impingement surgery, right shoulder with resection of the acromioclavicular joint, mild; diffuse aging cervical spondylosis; long-standing hypesthesia involving the right upper extremity and nonindustrial impingement syndrome of the left shoulder. Dr. Conaty concluded that appellant had continuing residuals of his right shoulder condition including pain and weakness but with no loss of muscle tone, strength or power. He stated that appellant continued to have subjective complaints of discomfort referable to the right shoulder due to the injury and surgery. Dr. Conaty stated that appellant could not return to his date-of-injury position, but that he could return to work as a third officer with restrictions of avoiding all repetitive work at or above shoulder level, avoiding climbing ladders and avoiding lifting and moving objects weighing 45 pounds or more. He stated that appellant did not require further treatment for his right shoulder.

The Office requested a supplemental report from Dr. Conaty on June 25, 1999. In a report dated September 14, 1999, he responded to the Office's questions regarding thoracic outlet syndrome and appellant's capacity for limited duty. Dr. Conaty stated that Adson's test for thoracic outlet syndrome was obliteration of peripheral pulses with abduction and head rotation. He stated on physical examination, "[Appellant] did not demonstrate any clinical evidence of thoracic outlet syndrome." Dr. Conaty opined that appellant could perform sedentary duty. He reiterated his diagnosis of cervical spondylosis, noting that the C8 dermatome hypesthesia was part of the degenerative process and not due to any specific history of trauma. Dr. Conaty concluded that appellant could work as a surveillance system monitor.

There is no current medical evidence in the record diagnosing thoracic outlet syndrome. The most recent report from appellant's attending physician diagnosing this condition is dated more than two years prior to the examination by the second opinion physician, Dr. Conaty, who performed a physical examination and stated that appellant did not exhibit the necessary clinical evidence of thoracic outlet syndrome. He provided a reasoned report including the lack of physical findings and as there is no contrary contemporaneous medical evidence, the Board finds that the Office met its burden of proof in establishing that appellant is no longer entitled to compensation benefits for the condition of thoracic outlet syndrome. The Board notes that appellant remains entitled to benefits for treatment of his right rotator cuff condition.

The Board further finds that appellant has no more than 10 percent permanent impairment of his right upper extremity for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>9</sup> and its implementing regulation<sup>10</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants,

---

<sup>9</sup> 5 U.S.C. § 8107.

<sup>10</sup> 20 C.F.R. § 10.404 (1999).

good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>11</sup> has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office medical adviser reviewed the medical evidence of record in determining appellant's permanent impairment of his right upper extremity. The Office medical adviser found that appellant underwent a distal clavicle resection and that this operation was a 10 percent impairment of appellant's right upper extremity.<sup>12</sup> The Office medical adviser noted that this method of determining permanent impairment resulted in a higher rating for schedule award purposes than calculating an award based on appellant's loss of function, which was limited to weakness and discomfort. He found that appellant would be entitled to 80 percent impairment of the axillary nerve or 4 percent impairment of the right upper extremity under that method of impairment rating.<sup>13</sup>

There is no other medical evidence in the record addressing appellant's permanent impairment for schedule award purposes. Therefore, the Board finds that the Office properly granted appellant a schedule award for 10 percent permanent impairment of his right upper extremity.

The January 7, 2000 and November 18, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
January 10, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

---

<sup>11</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993).

<sup>12</sup> A.M.A., *Guides*, 61, Table 27.

<sup>13</sup> A.M.A., *Guides*, 48, Table 11; 54, Table 15.