United States Department of Labor
Employees' Compensation Appeals Board

RONALD G. CHAVEZ, Appellant	)	
	)	**Docket No. 05-849**
and	)	**Issued: August 17, 2005**
DEPARTMENT OF THE AIR FORCE, AIR FORCE BASE, UT, Employer	)	

Appearances:
Ronald G. Chavez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 25, 2005 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated September 1, 2004, which denied his claim for an additional schedule award and December 22, 2004, denying modification. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than a 10 percent impairment of both upper extremities for which he received a schedule award.

FACTUAL HISTORY

This is the second appeal in the present case. In an April 7, 2004 decision, the Board found a conflict in opinion between appellant's treating physicians, Dr. David A. Cook, a Board-certified orthopedic surgeon, and Dr. Corey D. Anderson, Board-certified in physical medicine and rehabilitation, and an Office medical adviser with respect to the degree of impairment of his

upper extremities. The case was remanded for a resolution of the conflict.[1] The facts and the circumstances of the case are set forth in the Board's decision and incorporated herein by reference.[2]

The Office referred appellant to Dr. Robert P. Hansen, a Board-certified orthopedic surgeon, selected as the impartial specialist. In a report dated June 6, 2004, he reviewed the records and performed a physical examination of appellant. Dr. Hansen noted a history of his work-related injury and advised that appellant had reached maximum medical improvement on January 1, 2001. He diagnosed a history of bilateral elbow lateral epicondylitis with only minimal symptomology of the left elbow and a history of bilateral cubital tunnel release surgery. Dr. Hansen found minimal tenderness over the left elbow lateral humeral epicondyle, no tenderness over the incision, negative Tinel's sign, normal sensation and normal grip strength. With regard to the right elbow, examination revealed no tenderness over the lateral epicondyle, negative Tinels's sign, normal strength and sensation. He noted range of motion findings for flexion of 130 degrees of the left elbow for an impairment rating of 1 percent;[3] flexion of 120 degrees for the right elbow for an impairment rating of 2 percent;[4] extension of minus 5 degrees of the left elbow for an impairment rating of 0 percent;[5] extension of minus 5 degrees of the right elbow for an impairment rating of 0 percent;[6] pronation of 80 degrees of the left forearm for an impairment rating of 0 percent;[7] pronation of 80 degrees of the right arm for an impairment rating of 0 percent;[8] supination of 70 degrees of the left forearm for an impairment rating of 0 percent;[9] and supination of 70 degrees of the right forearm for an impairment rating of 0 percent.[10] Dr. Hansen advised that appellant did not have ankylosis at the elbow or forearm and showed no weakness or atrophy of the upper extremities due to the elbow pathology. He advised that, based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[11] appellant sustained a one percent impairment of the left upper extremity and a two percent impairment of the right upper extremity.

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[1] The Office accepted appellant's claim for bilateral epicondylitis and authorized left and right ulnar nerve releases which were performed on July 13 and August 12, 2000. By a decision dated February 28, 2003, he was granted a schedule award for 10 percent impairment of both upper extremities for the period February 15 to September 21, 2002.

[2] Docket No. 04-279 (issued April 7, 2004).

[3] *See* page 472, figure 16-34 A.M.A., *Guides* (5th ed. 2001).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *See* page 474, figure 16-37 A.M.A., *Guides* (5th ed. 2001).

[8] *Id.*

[9] *Id*.

[10] *Id.*

[11] A.M.A., *Guides* (5th ed. 2001).

In a letter dated July 28, 2004, the Office requested a supplemental report from Dr. Hansen and noted that it accepted the left and right ulnar release surgeries which were performed in July and August 2000. The Office indicated that he should consider the surgical procedures in his impairment rating. In a supplemental report dated August 19, 2004, Dr. Hansen advised that the surgeries healed well with no residual nerve entrapment findings objectively on examination. He advised that appellant's examination of July 6, 2004 revealed well-healed cubital tunnel release surgical incisions on both elbows; no tenderness over the incision sites; negative Tinel's sign over the cubital tunnel; normal distal sensation on both sides and normal strength on both sides. He concluded that there were no objective clinical findings to substantiate any impairment from the bilateral ulnar nerve release surgeries. Dr. Hansen advised that, according to the A.M.A., *Guides*, page 493,[12] impairment ratings of entrapment and compression neuropathies, appellant did not demonstrate positive clinical findings or loss of function to qualify for a permanent rating from the ulnar nerve surgery to both elbows.

In a decision dated September 1, 2004, the Office denied appellant's claim for an additional schedule award. The Office noted that appellant previously received a schedule award for 10 percent impairment of each arm and the medical evidence did not establish greater impairment.

By letter dated September 13, 2004, appellant requested reconsideration. He advised that the referee evaluation by Dr. Hansen was incomplete and noted that he only spent 10 minutes examining him. Appellant attached a copy of a letter he wrote to Dr. Hansen. He submitted a record of injury dated November 7, 2001 noting that he sustained a laceration of the upper lip and scalp.

In a decision dated December 22, 2004, the Office denied modification of the September 1, 2004 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[13] and its implementing regulation[14] sets forth the number of weeks of compensation payable to employees sustaining 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, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[15]

[12] *See* page 493, Impairment Rating of Entrapment/Compression Neuropathies, A.M.A., *Guides* (5th ed. 2001).

[13] 5 U.S.C. § 8107.

[14] 20 C.F.R. § 10.404 (1999).

[15] *See id.*; *Jacqueline S. Harris*, 54 ECAB ___ (Docket No. 02-203, issued October 4, 2002).

ANALYSIS

On appeal appellant alleges that he is entitled to an additional schedule award for impairment of both upper extremities. The Office accepted his claim for bilateral epicondylitis and authorized bilateral ulnar nerve releases in 2000. It previously granted appellant a schedule award for 10 percent impairment of both upper extremities. In the prior appeal, the Board found that a conflict was created in the medical evidence between appellant's attending physicians and an Office medical adviser concerning whether he had any additional impairment of the upper extremities. The Office referred appellant to Dr. Hansen to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[16]

The Board finds that the opinion of Dr. Hansen is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. His report establishes that appellant has no greater impairment than that previously awarded.

Dr. Hansen reviewed appellant's history, reported findings and noted an essentially normal physical examination. He stated that appellant reached maximum medical improvement on January 1, 2001. Dr. Hansen diagnosed a history of bilateral elbow lateral epicondylitis with only minimal symptomology of the left elbow and a history of bilateral cubital tunnel release. He advised that the surgeries had healed well with no residual nerve entrapment findings objectively on examination. Dr. Hansen advised that his examination of July 6, 2004 revealed well-healed cubital tunnel release surgical incisions on both elbows, no tenderness over the incision sites, negative Tinel's sign over the cubital tunnel bilaterally, normal distal sensation bilaterally, normal strength bilaterally and normal sensation bilaterally. He concluded that there were no objective clinical findings to substantiate any impairments due to appellant's bilateral ulnar nerve release surgeries. Dr. Hansen noted range of motion findings for flexion of 130 degrees of the left elbow for an impairment rating of 1 percent;[17] flexion of 120 degrees for the right elbow for an impairment rating of 2 percent;[18] extension of minus 5 degrees of the left elbow for an impairment rating of 0 percent;[19] extension of minus 5 degrees of the right elbow for an impairment rating of 0 percent;[20] pronation of 80 degrees of the left forearm for an impairment rating of 0 percent;[21] pronation of 80 degrees of the right arm for an impairment rating of 0 percent;[22] supination of 70 degrees of the left forearm for an impairment rating of 0

[16] *Aubrey Belnavis*, 37 ECAB 206 (1985). *See* 5 U.S.C. § 8123(a).

[17] A.M.A., *Guides*, *supra* note 3 at 472.

[18] *Id.*

[19] *Id*.

[20] *Id.*

[21] A.M.A., *Guides*, *supra* note 7 at 474.

[22] *Id.*

percent;[23] and supination of 70 degrees of the right forearm for an impairment rating of 0 percent.[24] He advised that appellant did not have ankylosis at the elbow or forearm and showed no weakness or atrophy of the upper extremities due to the elbow pathology. Dr. Hansen advised that, according to the A.M.A., *Guides*, appellant sustained a one percent impairment of the left upper extremity and a two percent impairment of the right upper extremity based on loss of range of motion. In a supplemental report dated August 19, 2004, he reiterated that there were no objective clinical findings to substantiate any impairment due to appellant's bilateral ulnar nerve release surgeries. Dr. Hansen concluded that, according to the A.M.A., *Guides* page 493, impairment ratings of entrapment and compression neuropathies, appellant did not demonstrate positive clinical findings or loss of function to qualify for an impairment rating for his ulnar nerve surgeries.[25]

Dr. Hansen properly applied the A.M.A., *Guides* and an impairment rating of one percent of the left upper extremity and a two percent impairment of the right upper extremity. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no greater impairment of his upper extremities than that previously awarded.

Although appellant alleged that Dr. Hansen's examination was incomplete and did not properly assess his impairment, he submitted no evidence to support his contention. The Board has held that an impartial medical specialist properly selected under the Office's rotational procedures will be presumed unbiased and the party seeking disqualification bears the substantial burden of proving otherwise; mere allegations are insufficient to establish bias.[26] Appellant's allegations of an incomplete examination by Dr. Hansen do not establish that the examination was incomplete.

CONCLUSION

The Board finds that appellant is not entitled to an additional impairment rating for his upper extremities.[27]

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[23] *Id.*

[24] *Id.*

[25] A.M.A., *Guides*, *supra* note 12 at 493.

[26] *See William Fidurski*, 54 ECAB ___ (Docket No. 02-516, issued October 9, 2002).

[27] With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the December 22 and September 1, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 17, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board