

**United States Department of Labor
Employees' Compensation Appeals Board**

HAROLD FAINE, Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer**

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**Docket No. 05-1034
Issued: October 7, 2005**

Appearances:
Harold Faine, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 4, 2005 appellant filed a timely appeal of a November 10, 2004 merit decision of the Office of Workers' Compensation Programs which found that he was not entitled to a schedule award due to his cervical spine condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant is entitled to a schedule award related to his accepted condition of the cervical spine.

FACTUAL HISTORY

On January 17, 2002 appellant, then a 47-year-old aircraft painter, filed a claim for compensation for a traumatic injury to his left shoulder sustained on January 8, 2002 by drilling and carrying fiberglass panels. The Office accepted that appellant sustained a cervical spine strain, a left shoulder sprain, a tear of the left superior labrum and impingement syndrome of the

left shoulder. On July 9, 2002 appellant underwent a labral excision, subacromial bursectomy, acromioplasty and open resection of the distal clavicle.

On December 31, 2002 appellant filed a claim for a schedule award. On February 10, 2003 the Office issued appellant a schedule award for a 17 percent permanent loss of use of his left arm, based on loss of shoulder motion and a distal clavicle resection.

On January 27, 2003 appellant filed a claim for a recurrence of disability related to his January 8, 2002 employment injury. Appellant experienced pain from his neck to his left shoulder while removing lug nuts to change a flat tire. In an April 10, 2003 report, Dr. Edward Shadeed, a Board-certified orthopedic surgeon, noted that appellant's history was that he felt a snap in his neck on January 8 2002¹ and that, according to his attending physician's reports, he continued to have pain in his neck or left arm throughout the year. He concluded that appellant's axial neck pain and left upper extremity pain and weakness were caused by the injury to his cervical spine on January 8, 2002, and that the tire changing incident on January 19, 2003 may have aggravated this condition. Dr. Shadeed recommended surgery on appellant's cervical spine, which the Office authorized. On October 28, 2003 he performed a discectomy and bilateral foraminotomy and athrodesis at C4-5 and C5-6 for herniated discs at these levels. In a December 5, 2003 report, Dr. Shadeed stated that he and appellant were very pleased with the results of the surgery, as it resulted in "essentially complete resolution of his bilateral upper extremity radicular symptoms and a very tolerable amount of axial neck pain."

On February 17, 2004 appellant filed a claim for a schedule award. In a March 3, 2004 report, Dr. Shadeed stated that, after the October 28, 2003 surgery, appellant "experienced an immediate, almost complete resolution of his left upper extremity radicular pain." By December 5, 2003, he had resolution of his left upper extremity numbness. On examination appellant had 5/5 motor strength and no sensory deficits.² Dr. Shadeed stated, "According to the A[merican] M[edical] A[ssociation,] *Guides to the Evaluation of Permanent Impairment*, Fifth Edition, the patient would be considered DRE [diagnosis-related estimate], Cervical Category IV with 25 percent impairment of the whole person, secondary to his successful arthrodesis of the C5-6 segment." An Office medical adviser reviewed Dr. Shadeed's March 3, 2004 report on November 4, 2004 and stated that it showed normal motor strength of the upper extremities with no sensory deficits, which resulted in zero percent impairment of the upper extremities. The Office medical adviser noted that a schedule award was not payable for an impairment of the cervical spine.

By decision dated November 10, 2004, the Office found that appellant was not entitled to a schedule award, as he had no permanent impairment of the upper extremities and a schedule award was not payable for an impairment to the spine.

¹ This was the history given by appellant in a March 20, 2002 response to an Office inquiry.

² The doctor reported that appellant had tingling and numbness in the second and third digits of his left hand, but attributed this to carpal tunnel syndrome that he considered not to be a work-related condition.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ provide for payment of compensation to employees sustaining loss, or loss of use, or specified members of the body, and set forth the number of weeks of compensation payable to employees sustaining such permanent impairment. No schedule award is payable for an impairment of the back, but a schedule award is payable for an employment-related permanent impairment to an extremity if the cause of the impairment originated in the spine.⁵

ANALYSIS

Appellant received a schedule award for a 17 percent loss of use of his left arm related to his January 8, 2002 shoulder injury and July 9, 2002 shoulder surgery. Subsequently, the Office accepted that his January 8, 2002 employment injury also resulted in an injury to his cervical spine, and authorized surgery that Dr. Shadeed performed on October 28, 2003. Appellant then filed a claim for a schedule award for the effects of the cervical spine condition and surgery.

As a schedule award is not payable for an impairment to the spine, which includes the neck,⁶ Dr. Shadeed's assignment of a 25 percent whole person impairment for a cervical spine impairment is not a basis for payment of a schedule award.⁷ If the accepted cervical spine condition resulted in permanent impairment of either arm, a schedule award could be payable for such impairment. However, Dr. Shadeed stated in his March 3, 2004 report that appellant's radicular pain had resolved, as had his numbness. On examination he reported no loss of strength and no sensory deficit related to the cervical spine condition. The March 3, 2004 report from Dr. Shadeed establishes that appellant does not have a permanent impairment of either arm related to his accepted condition of the cervical spine.

CONCLUSION

The Board finds that the Office properly found that appellant was not entitled to a schedule award related to his accepted condition of the cervical spine.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *John Litwinka*, 41 ECAB 956 (1990).

⁶ *See Rozella L. Skinner*, 37 ECAB 398 (1986).

⁷ Schedule awards are not payable for impairments of the whole person. *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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