



of duty. He did not stop work. The Office accepted the claim administratively. Appellant retired on disability on August 23, 2003.

On February 3, 2004 appellant filed a claim for a schedule award.

By letter dated March 8, 2004, the Office advised that, because he lost no time from work and his medical expenses were less than \$1,500.00, appellant's claim was never adjudicated. The Office advised appellant that the evidence was insufficient to support his claim for a traumatic injury and requested that he submit additional factual and medical evidence.

In a report dated March 1, 2000, Dr. Michael J. Nelson, an emergency room physician Board-certified in psychiatry and neurology, indicated that appellant sustained an electric shock that day while at work. He had no respiratory or pain complaints but related a tingly sensation. Dr. Nelson stated that physical examination was normal, with no pain or tenderness over his back, chest, upper and lower extremities and neck. Appellant's cardiovascular tests were normal and no signs of myoglobinuria or hemoglobinuria were noted. Dr. Nelson discharged him to follow-up with worker's compensation.

In a report dated March 3, 2004, Dr. Stephanie Thompson, a Board-certified internist, stated that appellant had cervical stenosis. She noted his symptoms of right shoulder and neck pain as supported by an electromyogram evaluation, bilateral numb hands, right more than left and noted that appellant's hand symptoms began after his electric shock on March 1, 2000. Dr. Thompson also noted hip pain. In a report dated May 3, 2004, she stated that appellant had degenerative changes from C3 to C5. Dr. Thompson noted spinal canal stenosis at all cervical disc spaces, with no evidence of disc herniation at any level. She indicated that appellant was status post discectomy at C3-4 where she observed a mild enhancement. In a report dated March 22, 2004, appellant stated that the immediate effects of the March 1, 2000 injury were numbness in the fingers, thumbs and arms and that his shoulders became immediately painful. He would awaken at night "shaking through both hands, arms [and] shoulders, across my chest." In an attending physician's report dated March 16, 2004, Dr. Nelson stated that he treated appellant on March 1, 2000 for electric shock sustained that day and referred him to a clinic for further evaluation.

On April 9, 2004 the Office accepted appellant's claim for the effects of electric shock sustained on March 1, 2000. Under separate letter the same day, the Office advised appellant to submit evidence in support of his schedule award claim.

In a report dated April 27, 2004, Dr. Thompson indicated that appellant sustained electrocution on two separate occasions in his past employment and that he was left with numbness and tingling of his upper extremities. She listed a 15 percent disability as a result of his electrocution injuries. On June 15, 2004 the Office advised appellant to submit the medical records concerning his cervical stenosis and cervical radiculopathy.

On June 15, 2004 the Office advised appellant that Dr. Thompson indicated that he had a claim with the Railroad Retirement Board for cervical stenosis and cervical radiculopathy and that it would be necessary to consider this condition in determining his entitlement to a schedule award. On June 18, 2004 appellant stated that he retired on disability and had another incident of

an employment-related electric shock of 277 volts on March 12, 2001, but did not file a claim. Appellant sought treatment at the health unit.

In a report dated July 11, 2002, Dr. Clifford M. Gall, a Board-certified neurosurgeon, stated that appellant experienced numbness in his shoulders, arms and hands and pain in his neck. When he moved his neck or arms in a certain way, he felt a jolt of electricity down into his arms and sometimes into his legs. Appellant noted tingling in his left leg but no weakness. Dr. Gall reported that appellant had depressed reflexes in the upper extremities symmetrically and decreased sensations to light touch over the hands and arms up to the shoulder. He read a computerized tomography (CT) scan of the cervical spine as revealing cervical spondylosis at C5-6 and C6-7 and recommended a magnetic resonance imaging (MRI) scan of the cervical spine. On July 22, 2002 Dr. Gall stated that a recent MRI scan suggested a narrowing of the cervical spinal canal at C3-4 secondary to disc herniation, although a physical examination did not support that diagnosis. He recommended an anterior cervical discectomy at C3-4. On September 27, 2002 Dr. Gall stated that appellant related numbness in his shoulders, arms and hands and neck pain. Appellant noted intermittent symptoms when moving certain ways including a jolt of electricity into his legs which he also described as a “tingling” in his left leg. Sensory examination revealed decreased perception over the hand and arm into the shoulder bilaterally. He opined that appellant’s C3-4 disc was pushing on the spinal cord creating numbness in the arms, hands and left leg. On October 2, 2002 Dr. Gall performed an anterior C3-4 discectomy. On November 18, 2002 he stated that x-rays revealed degenerative disc changes of C5-6 and narrowing of the disc space at C3-4. On December 30, 2002 Dr. Gall stated that appellant had not improved since the October 2, 2002 surgery and considered peripheral entrapment neuropathy as the cause of his condition. He recommended further electromyogram evaluation of the upper extremities. On March 10, 2004 he stated that he was not certain that an electric shock in appellant’s fingers could cause numbness.

On August 4, 2004 the Office referred the case record to an Office medical adviser and requested an opinion on whether appellant had any impairment based on the effects of the electrical shock. The Office also sought an opinion on whether appellant’s cervical disc herniation and the C3-4 discectomy performed on October 2, 2002 were attributable to the March 1, 2000 electrical shock. The Office noted that it had not accepted appellant’s medical treatment for the cervical spine.

In a report dated November 12, 2004, the Office medical adviser stated that the March 1, 2000 emergency room report indicated that there was no myoglobinuria or hemoglobinuria and that the electrocardiogram was normal. He stated that the July 11, 2002 report of Dr. Gall did not establish causal relationship between the disc protrusion at C3-4 and the accepted electric shock of March 1, 2000. The medical records, particularly Dr. Gall’s postoperative report, did not indicate that appellant had a ratable upper extremity condition. He concluded that the records did not support that appellant’s cervical spine condition, first referenced in July 2002, was causally related, accelerated, precipitated or aggravated by the March 1, 2000 injury.

By decision dated November 18, 2004, the Office denied appellant’s claim for a schedule award and found that his cervical condition was not causally related to the accepted injury.

On December 10, 2004 appellant requested an oral hearing that was held on April 21, 2005. In a report dated April 26, 2005, Dr. Thompson stated that she first treated him on March 12, 2003 for bilateral shoulder pain. She referred to a September 14, 2004 report of Dr. James A. Wolter, a Board-certified neurological surgeon, who opined that appellant's strength was noted for some dramatic questionable pain-related behavior particularly when testing the deltoids. Appellant was symptomatic in all right muscle groups of the arm when compared to the left. Sensation was diminished in the right hand compared to the left. Dr. Thompson also referred to the July 11, 2003 electromyogram (EMG) evaluation report, indicating active denervations of low cervical spinal muscles and cervical radiculopathy. She opined that appellant started having symptoms after the electric shock and prior to the cervical spine surgery and that the electric shock injuries "have played a role in his current symptomology." Nerve conduction studies (NCS) dated July 11, 2003 revealed normal bilateral median motor and right ulnar motor nerves.

In a decision dated August 9, 2005, the Office hearing representative affirmed the November 18, 2004 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup>

These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Id.*

An award of compensation may not be based on surmise, conjecture, speculation or upon the claimant's own belief that there is causal relationship between the disability or the medical condition and employment.<sup>6</sup> To establish causal relationship, the claimant must submit a physician's report that reviews and considers employment factors identified by the claimant as causing the disability or medical condition as well as findings upon examination of appellant and medical history, state whether the employment injury caused or aggravated his or her diagnosed condition or conditions and present medical rationale in support of his or her opinion.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

It is accepted that appellant sustained an electrical shock at work on March 1, 2000. However, the medical evidence does not establish that this shock caused or aggravated a cervical condition.

Dr. Nelson's March 1, 2000 report indicated that appellant had no respiratory, cardiac or pain complaints after experiencing an electric shock. He did not attribute any cervical condition to the shock.

On March 3, 2004 Dr. Thompson noted appellant's cervical stenosis, right shoulder pain and bilateral hand numbness, which she stated began after his initial electric shock on March 1, 2000. On April 27, 2004 Dr. Thompson listed two electrocution injuries. However, she failed to note with specificity when the injuries occurred, a diagnosis with respect to those injuries and whether appellant's current condition was attributable to the injuries. In her May 3, 2004 report, Dr. Thompson noted degenerative disc changes and cervical stenosis. However, she did not relate these conditions to his March 1, 2000 electric shock. Although she stated that his hand numbness started after the March 1, 2000 employment-related injury, Dr. Thompson did not offer rationalized medical opinion explaining how the accepted shock would cause or contribute to the development of the diagnosed degenerative changes or cervical stenosis.<sup>8</sup>

On April 26, 2005 Dr. Thompson noted that the electric shock injuries played a role in appellant's current symptomology of deltoid pain, right hand pain and cervical radiculopathy. However, she did not provide medical rationale to explain how the effects of the shock would cause or contribute to appellant's symptoms almost three years after the incident.<sup>9</sup> Such rationale is necessary as the medical report from the attending physician on the day of the shock indicated that he had no symptoms to the upper chest, arms or hands.

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<sup>6</sup> *Donald W. Long*, 41 ECAB 142 (1989).

<sup>7</sup> *Id.*

<sup>8</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>9</sup> *See Manuel Gill*, 52 ECAB 282 (2001).

Dr. Gall referred to appellant's cervical condition as supported by an MRI scan and included an October 2, 2002 surgical and postsurgical reports. However, he made no reference to his March 1, 2000 employment-related injury as the cause of the condition.<sup>10</sup>

There is insufficient medical evidence of record which explains how the March 1, 2000 shock caused or aggravated the diagnosed conditions. The medical evidence submitted does not specifically address causal relationship or fails to provide a rationalized medical opinion establishing a causal relationship. Because there is no medical evidence explaining how the employment incident caused or aggravated a diagnosed condition, appellant has not met his burden of proof in establishing his claim.<sup>11</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

The schedule award provision of the Federal Employees' Compensation Act<sup>12</sup> and its implementing regulation<sup>13</sup> sets 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, 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* (5<sup>th</sup> ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The only medical evidence of record providing a rating is Dr. Thompson who stated that appellant sustained a 15 percent impairment as a result of his electrocution injuries which caused numbness and tingling of his upper extremities. However, she did not explain how this impairment was rated in accordance with the A.M.A., *Guides*. Because of this, her report is insufficient to establish any ratable impairment resulting from appellant's accepted shock injury.<sup>15</sup>

An Office medical adviser provided a comprehensive review of the medical records, including Dr. Gall's reports and found no basis on which to attribute any permanent impairment to the March 1, 2000 electrical shock incident. The Office medical adviser reviewed the

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<sup>10</sup> *Richael O'Brien*, 53 ECAB 234 (2001).

<sup>11</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>12</sup> 5 U.S.C. § 8107.

<sup>13</sup> 20 C.F.R. § 10.404.

<sup>14</sup> *Willie C. Howard*, 55 ECAB \_\_\_\_ (Docket No. 04-342 & 04-464, issued May 27, 2004).

<sup>15</sup> See *Shalanya Ellison*, 56 ECAB \_\_\_\_ (Docket No. 04-824, issued November 10, 2004) (schedule awards are to be based on the A.M.A., *Guides*; an estimate of permanent impairment is irrelevant and not probative where it is not based on the A.M.A., *Guides*).

emergency room reports, finding no condition was diagnosed as a result of the incident and that Dr. Thompson's reports did not include rationale relating appellant's cervical complaints to this incident.

The Board finds that the medical evidence does not establish that appellant has a ratable impairment causally related to the March 1, 2000 electrical shock. For this reason, the Office properly denied his schedule award claim.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained a cervical injury as a result of his March 1, 2000 electric shock or that he has permanent impairment due to this incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 9, 2005 and November 18, 2004 are affirmed.

Issued: March 15, 2006  
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