U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLOYD R. HUNTER and DEPARTMENT OF THE NAVY, NAVAL AIR STATION, NORTH ISLAND, San Diego, Calif.

Docket No. 96-820; Submitted on the Record;
Issued February 4, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, BRADLEY T. KNOTT

The issue is whether appellant is entitled to a schedule award greater than the five percent he received for permanent impairment of both upper extremities.

On November 17, 1993 appellant, then a 51-year-old rigger, filed a notice of traumatic injury, claiming that he wrenched his back and shoulder while moving a 1,200-pound safe on a dolly. The Office of Workers' Compensation Programs accepted the claim for cervical and thoracic strain as well as herniated discs at C4-6 and paid appropriate compensation.

Subsequently, appellant returned to light duty but underwent a cervical discectomy and fusion on August 26, 1994. Appellant then returned to limited-duty work on December 19, 1994 for four hours a day.

On August 14, 1995 the Office referred appellant to Dr. John M. McCluskey, a general practitioner, to determine the extent of permanent partial impairment of appellant's upper extremities. Dr. McCluskey, appellant's family physician, informed the Office that Dr. Lance L. Altenau, a Board-certified neurological surgeon, who performed appellant's surgery, would be better qualified to offer an opinion on permanent partial impairment.

In a report dated September 12, 1995, Dr. Altenau estimated appellant's loss of strength at 10 to 15 percent in the upper extremities and 10 to 15 percent in the hands and fingers. He added that the neck muscles demonstrated only minimal weakness of grip bilaterally, that the date of maximum medical improvement was March 23, 1995 and that the degree of impairment due to loss of function resulting from sensory deficit, pain or discomfort was zero.

The Office referred the medical records to the Office medical adviser to calculate a schedule award. The Office medical adviser determined a five percent impairment of each upper extremity resulting from the accepted work injuries, noting that the award did not cover appellant's neck.

On December 19, 1995 the Office issued a schedule award for a five percent loss of use of both upper extremities. The $1,850.00 award ran from December 10, 1995 to July 15, 1996.

The Board finds that appellant is entitled to no more than the five percent schedule award issued for permanent impairment of both upper extremities.

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.304 of the implementing federal regulations,[2] schedule awards are payable for the permanent impairment of specified members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[3]

However, neither the Act nor the regulations specify the method by which the percentage of impairment shall be determined.[4] The method used in making such determinations rests in the sound discretion of the Office.[5] For consistent results and to ensure equal justice for all claimants, the Office has adopted, and the Board has approved, the use of the appropriate edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.[6]

In this case, the Office medical adviser properly applied the A.M.A., *Guides* in calculating the percentage of impairment. He noted Dr. Altenau's notation of 0 percentage of impairment due to pain, altered sensation and loss of motion, used the higher 15 percent figure for calculating loss of strength and considered a 35 percent maximum motor deficit for enervated muscles due to disc surgery. Based on the formula found in the A.M.A., *Guides*, the Office medical adviser properly determined a five percent loss for each upper extremity.

Appellant argues that Dr. Altenau established appellant's disability at 15 percent for each arm, hand, thumb and finger, but appellant is misreading the physician's report. In addition, the Act requires that the A.M.A., *Guides* be used in determining schedule awards. Dr. Altenau neglected to apply the proper criteria and thus the Office referred the medical records to the Office medical adviser to calculate the award.

Appellant also argues that his compensation for wage loss was "reportedly being considered as an offset" to the schedule award. However, the record reveals that a check for the schedule award payment of $1,850.00 was issued on January 6, 1996.

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[1] 5 U.S.C. §§ 8101-8193. 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.304.

[3] 5 U.S.C. § 8107(c)(19); *Hermese H. Baldridge*, 46 ECAB ___ (Docket No. 94-2276, issued July 28, 1995).

[4] *A. George Lampo*, 45 ECAB 441, 443 (1994).

[5] *George E. Williams*, 44 ECAB 530, 532 (1993).

[6] *James J. Hjort*, 45 ECAB 595, 599 (1994).

The record contains a July 1, 1997 letter from appellant's congressional representative requesting that appellant's claim for depression, which was denied by the Office on May 9, 1997, be included with the appeal of his schedule award. The Board has no jurisdiction to consider appellant's emotional condition claim inasmuch as the Board is precluded from considering decisions issued more than one year prior to the filing of the appeal notice.[7] In this case, appellant's notice was docketed on January 22, 1996. Therefore, the Board's jurisdiction in this case extends only to the schedule award decision dated December 19, 1995.[8]

The December 19, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 4, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[7] The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[8] If appellant wants to appeal the denial of his emotional condition claim, he should refer to the appeal rights that accompanied the decision. If appellant chooses to request reconsideration and submit additional evidence regarding both of his claims, the Office may consolidate the claims for ease of processing. The Board notes that the record contains an October 9, 1996 medical opinion from Dr. Larry D. Dodge, a Board-certified orthopedic surgeon. The Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *William A. Couch,* 41 ECAB 548, 553 (1990). Thus, the new evidence dated October 9, 1996 cannot be considered by the Board because it post dates the Office's final decision dated December 19, 1995.