

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CLIFFORD S. BLACK and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 96-1227; Submitted on the Record;  
Issued February 24, 1998*

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*Edward E. Olson, 35 ECAB 1099 (1984)*  
DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant had any periods of disability related to his employment-related cervical sprain/strain; (2) whether the residuals of this condition ceased by January 29, 1996; and (3) whether appellant has an employment-related permanent loss of use of the arms that would entitle him to a schedule award under the Federal Employees' Compensation Act.

The Office of Workers' Compensation Programs accepted that appellant sustained a cervical sprain/strain in the performance of his duties as an electrical worker. Appellant was laid off by the employing establishment from February 1993 to April 1994; he did not file a claim for compensation for disability for this period and did not submit any medical evidence indicating that he was disabled for work during this period. Following his return to work in April 1994, appellant was assigned light duty on June 17, 1994. Appellant continued to work at the employing establishment until its closure in September 1995. The Office did not pay appellant any compensation for disability, but paid his medical expenses until January 29, 1996, when it issued a decision terminating his entitlement to all compensation benefits under the Act. The Office rejected appellant's claim for a schedule award by a decision dated October 4, 1995.

The Board finds that the medical evidence fails to establish that appellant was disabled for work beginning September 1995 by an employment-related condition, and that the weight of the medical evidence establishes that the residuals of appellant's employment-related condition of cervical sprain/strain ceased by January 29, 1996.

The Office's acceptance of a cervical sprain/strain was based on the January 19, 1995 report of Dr. Henry S. Wieder, Jr., a Board-certified orthopedic surgeon to whom the Office referred appellant. Based on his review of the medical evidence of record, including magnetic resonance imaging (MRI) performed on December 22, 1992 and on his examination of appellant on December 27, 1994, Dr. Wieder concluded that appellant did not have a herniated disc, but

that he had a chronic cervical sprain/strain causally related to his occupational activities. Appellant submitted reports from Dr. Mark J. Reiner, an osteopath, who diagnosed cervical disc disease but did not indicate this condition was causally related to appellant's employment. In a report on an Office form of a May 25, 1995 examination of appellant, Dr. Reiner indicated that appellant was totally disabled. This opinion is entitled to little probative value, as appellant was working eight hours per day at that time.

In a report dated August 14, 1995, Dr. Stephen M. Horowitz, a Board-certified orthopedic surgeon to whom the Office referred appellant, concluded, based on his review of the medical evidence of record and his examination of appellant, that appellant's diagnosis was degenerative arthritis of the cervical spine. Dr. Horowitz stated that appellant's "complaints with regards to the strain and sprain should have resolved by now," and that the restrictions appellant had for work were related to his degenerative arthritis and not "secondary to any event which has occurred at work." In a report dated November 27, 1995, Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon to whom the Office referred appellant,<sup>1</sup> expressed a similar opinion. Based on his review of the medical evidence of record and his examination of appellant, Dr. Klinghoffer concluded:

"On the basis of this man's history, I believe that he probably sustained some degree of cervical spine soft tissue strain in the course of his work in 1990, but five and a half years have elapsed, his examination does not reveal any physical abnormality, and there is nothing in his studies that might explain the perpetuation of symptoms for this length of time. He does have x-ray evidence of some degenerative arthritis, but is relatively mild and less than usually seen in people of his age, and I do not believe that that is a significant factor. In any event, his complaint of constant pain is not explainable on the basis of anything that I know about this patient, and I suspect that there may be nonphysical factors that are the basis for those symptoms.

"I do not believe that this man has any physical problem that I can relate to anything that happened to him in the course of his work in 1990, and I do not believe that he has any physical disability. He should be able to perform any type of work that he was able to perform until September of 1995 when the Navy Yard closed and any type of work that he was able to perform prior to 1990 when his symptoms began."

The Board finds that the opinions of Drs. Horowitz and Klinghoffer represent the weight of the medical evidence. Both these doctors based their opinions on their examinations of appellant and on a review of the prior medical evidence including appellant's MRI. Both these physicians agreed that appellant had degenerative arthritis of his cervical spine that was not related to his employment. Dr. Klinghoffer explained why he did not believe the degenerative

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<sup>1</sup> Although the Office indicated that the referral to Dr. Klinghoffer was made to resolve a conflict of medical opinion, the Board is unable to find a conflict between appellant's physician and a physician examining appellant for the government. The reports of appellant's physician, Dr. Reiner, do not show a disabling employment-related condition, and Dr. Wieder, who reported a disabling employment-related condition in a January 19, 1995 report, was, like Dr. Horowitz, a physician examining appellant for the Office.

arthritis was related to appellant's employment, noting that it was "less than usually seen in people of his age." There is no evidence that appellant's degenerative arthritis of the cervical spine is causally related to his employment. Drs. Horowitz and Klinghoffer also both concluded that appellant's cervical sprain/strain, the only condition accepted by the Office, had resolved by the time of their examinations of appellant in August and November 1995, and that appellant had no work restrictions related to any employment-related condition. The opinions of Drs. Horowitz and Klinghoffer are sufficient to establish that the chronic cervical sprain/strain found by Dr. Wieder on his examination of December 27, 1994 resolved by January 29, 1996, the date the Office terminated appellant's authorization for medical treatment. The weight of the medical evidence establishes that appellant had no employment-related work restrictions by the time of the closure of his employing establishment in September 1995, and there is no medical evidence relatively contemporaneous with the closure of the employing establishment indicating that appellant had employment-related work restrictions at that time. As disability under the Act generally means inability to work because of an employment-related condition,<sup>2</sup> the evidence does not establish that appellant was disabled for work beginning September 1995.

The Board further finds that appellant has not established that he has an employment-related permanent loss of use of the arms that would entitle him to a schedule award.

The schedule award provision of the Act<sup>3</sup> and its implementing regulation<sup>4</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. The arm is one of the members of the body specified by the Act. Appellant has the burden of establishing that his employment-related condition resulted in a permanent loss of use of a scheduled member of the body.<sup>5</sup>

The only medical report that lends any support to appellant's claim for a schedule award is the June 8, 1995 report of Dr. Reiner. In this report, Dr. Reiner stated that an MRI showed bulging at C4-5 and C5-6, that an electromyogram revealed bilateral carpal tunnel syndrome and bilateral ulnar neuropathy at the elbows, and that there was also some cervical nerve root irritation. Dr. Reiner concluded, "I do believe that [appellant] has some permanent residuals affecting both his arms and his cervical spine. I believe that he has a 25 percent [loss] of permanent function to his cervical spine, as well as a permanent loss of function to both arms at 25 percent to each."

Dr. Reiner's June 8, 1995 report is not sufficient to meet appellant's burden of proof. A schedule award is not payable under the Act for the back or the neck.<sup>6</sup> An impairment to the arm arising from a cervical spine injury could be compensable as a schedule award, but Dr. Reiner's

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<sup>2</sup> *David H. Goss*, 32 ECAB 24 (1980).

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.304.

<sup>5</sup> *James E. Jenkins*, 39 ECAB 860 (1988).

<sup>6</sup> *Robert Henry Guy*, 29 ECAB 734 (1978).

June 8, 1995 report does not establish that appellant's permanent arm impairment is due to his injury to the cervical spine, as Dr. Reiner indicates appellant has two other conditions -- carpal tunnel syndrome and ulnar neuropathy at the elbows -- that could be the cause of his permanent arm impairment. As appellant has not established that these conditions are causally related to his employment, any permanent loss of use due to carpal tunnel syndrome or ulnar neuropathy are not compensable under the Act.

The decisions of the Office of Workers' Compensation Programs dated January 29, 1996 and October 4, 1995 are affirmed.

Dated, Washington, D.C.  
February 24, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member