

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL W. MEYRICK and DRUG ENFORCEMENT AGENCY,
San Jose, Calif.

*Docket No. 96-2041; Submitted on the Record;
Issued July 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has a permanent impairment of either upper extremity related to his April 22, 1994 injury to the neck.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 anatomical members and functions, for which the Act and the regulation provide for payment of schedule awards do not include impairments of the back, neck or the body as a whole.³ A claimant may be entitled to a schedule award for permanent impairment to an upper extremity even though the cause of the impairment originated in the spine.⁴

To determine whether appellant has a permanent impairment of the arms related to his accepted April 22, 1994 employment injury, the Office of Workers' Compensation Programs requested that his attending physician, Dr. Wayne S. Chronister, a Board-certified orthopedic surgeon, evaluate appellant for such an impairment, using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Upon being advised by Dr. Chronister that his "practice does not include specific disability evaluation/ratings," the Office referred appellant, a statement of accepted facts and copies of his medical records to Dr. Francis G. D'Ambrosio, a Board-certified orthopedic surgeon, for an opinion whether appellant had any permanent impairment of the upper extremities related to his April 22, 1994 injury. In a report dated July 3, 1995, Dr. D'Ambrosio, after reviewing appellant's history, medical records and

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Arturo Vitalino*, 30 ECAB 1299 (1979).

⁴ *Rozella L. Skinner*, 37 ECAB 398 (1986).

findings on examination, concluded, "I do not find any permanent impairment in the upper extremities due to his injuries."

By decision dated August 31, 1995, the Office found that a schedule award was not payable for the back unless it impacted on the extremities and that no permanent impairment of the arms was shown.

Appellant requested reconsideration and submitted a report dated November 14, 1995 from Dr. David J. Graubard, a Board-certified orthopedic surgeon. Dr. Graubard reported that appellant complained of burning pain from the base of his neck radiating down to the interscapular area, but that he "denies any radiation of the pain and denies numbness or tingling in the upper extremities." Examination of appellant's upper extremities revealed normal range of motion and muscle strength bilaterally, normal grip strength on both sides, normal sensation and normal deep tendon reflexes. Dr. Graubard diagnosed cervical spondylosis and concluded, "Based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, it appears that taking into consideration the subjective complaints as well as the objective findings, [appellant] would have a permanent impairment equivalent to DRE Cervicothoracic Category II, which equates to a five percent whole-person impairment." Dr. Ellen Pichey, who is Board-certified in family practice and in preventive medicine, reviewed Dr. Graubard's report as an Office medical consultant and concluded that it showed no permanent impairment of the upper extremities.

By decision dated March 8, 1996, the Office refused to modify its prior decision.

The Board finds that the evidence fails to establish that appellant has a permanent impairment of either upper extremity related to his April 22, 1994 injury to the neck.

Dr. D'Ambrosio, the Board-certified orthopedic surgeon, to whom the Office referred appellant for an evaluation of any permanent impairment of the arms due to the April 22, 1994 employment injury, concluded that appellant had no such permanent impairment. Dr. Graubard, the Board-certified orthopedic surgeon, whose report appellant submitted in support of his request for reconsideration, reported normal motion, strength, reflexes and sensation of the upper extremities. Dr. Graubard's rating of a five percent impairment of the whole person was based on an impairment of the cervical spine and does not show any permanent impairment of the arms.

On appeal, appellant contends that he is entitled to a schedule award for disfigurement of the neck. Section 8107(c)(21) provides for compensation for "serious disfigurement of the face, head, or neck of a character likely to handicap and individual in securing or maintaining employment." However, the plain meaning of the word "disfigurement," the provisions of the

Office's procedure manual,⁵ and Board cases⁶ make it clear that this section applies to cosmetic, externally observable defects. There is no evidence of such defects in the present case.

The decisions of the Office of Workers' Compensation Programs dated March 8, 1996 and August 31, 1995 are affirmed.

Dated, Washington, D.C.
July 1, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8 (March 1995) refers to scars and blemishes and indicates that photographs must be submitted and the claimant personally observed.

⁶ See, e.g., *Gary W. Blanch*, 44 ECAB 865 (1993) (facial scar); *Edward F. Resnick*, 38 ECAB 604 (1987) (dermatitis); *Carlisle Leonard Vincent*, 5 ECAB 186 (1952) (sinking of the cheek and deviation of the nose).