U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES M. FREEMAN and DEPARTMENT OF VETERANS AFFAIRS, VETERANS AFFAIRS MEDICAL CENTER, Philadelphia, Pa.

*Docket No. 96-1312; Submitted on the Record;*
*Issued January 12, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he has greater than a 33 percent permanent impairment for loss of use of his left upper extremity, for which he received a schedule award.

On June 1, 1991 appellant, a 58-year-old dialysis technician, injured his left thumb while changing a tank in a water treatment spring. Appellant filed a Form CA-1 claim for compensation for traumatic injury on June 3, 1991, which the Office of Workers' Compensation Programs accepted for contusion of the left thumb,[1] by letter dated December 10, 1991.

Appellant began to experience pain in his left shoulder, for which he was examined by Dr. Gerald Williams, a Board-certified orthopedic surgeon, on January 3, 1992. In a report dated January 3, 1992, Dr. Williams stated that, approximately three weeks prior to the visit, appellant began to notice spontaneous onset of left shoulder pain, in addition to coolness in his left arm and shoulder. Dr. Williams related that appellant had developed a post-traumatic reflex sympathetic dystrophy of the left hand as a result of the June 1, 1991 employment injury, which had evolved into a gross atrophy of the entire left upper extremity. He opined that appellant's new onset of shoulder symptoms were most likely the result of the reflex sympathetic dystrophy involving his entire left upper extremity.

On January 24, 1992 appellant was examined by Dr. Lawrence H. Schneider, a Board-certified and specialist in hand surgery, who reaffirmed Dr. Williams' diagnosis of reflex sympathetic dystrophy, otherwise known as "shoulder-hand syndrome" and classified appellant as disabled.

Dr. Schneider reexamined appellant on July 15, 1992 and stated in a report dated July 15, 1992 that appellant had symptoms essentially of the entire left upper extremity. In a follow-up

[1] The Office erroneously stated that the claim had been accepted for injury to appellant's right thumb.

report dated April 28, 1993, Dr. Schneider stated that appellant had ongoing problems in his left upper extremity and that, although his thumb was impaired by a loss of function at the interphalangeal joint, his main problem was severe pain in his left shoulder.

On June 15, 1993 appellant filed a Form CA-7 claim for a schedule award based on partial loss of use of his left upper extremity.

By letter dated January 13, 1994, the Office scheduled appellant for an impairment rating evaluation for February 2, 1994 with Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon.

In a report dated February 6, 1994, Dr. Klinghoffer confirmed that appellant had residuals of reflex sympathetic dystrophy involving the left upper extremity which were related to the initial June 1991 employment injury involving his left thumb. Dr. Klinghoffer stated that appellant's major problem involved the left shoulder which had limited painful motion with limitation of elbow motion, slight limitation of wrist motion and a moderate degree of limitation of motion in his left thumb. He calculated appellant's range of motion in his left shoulder by determining that he had 50 degrees abduction, 90 degrees of forward elevation, no external rotation at all and 40 degrees internal rotation, as opposed to 80 degrees abduction in his right shoulder, with 100 degrees of forward elevation, 45 degrees external rotation, and 60 degrees internal rotation. Dr. Klinghoffer found that appellant's left elbow had full extension but had 10 degrees less flexion than the right elbow, and that left elbow motions caused a complaint of pain in the elbow. He further found that:

> "The wrist girths were symmetrical. There was a patch of deep pigmentation about a half inch in diameter over the left anatomic snuff-box. [Appellant] said that that had been noticeable since he received an injection in that area. He was tender over the dorsal surface of the left radial styloid process but nowhere else in the wrist region."[2]

In a March 15, 1994 memorandum, an Office medical adviser reviewed Dr. Klinghoffer's findings and, applying the standards outlined in the A.M.A., *Guides*, determined that appellant had a total 33 percent impairment in his left upper extremity. In arriving at this figure, the Office medical adviser initially calculated that appellant had a 17 percent impairment in his left shoulder based on range of motion of 50 degrees in abduction, which equated to a 6 percent impairment according to figure 41, page 44 of the A.M.A., *Guides*; flexion of 90 degrees, which equated to a 6 percent impairment according to figure 38, page 43; external rotation of 0 degrees, which equated to a 2 percent impairment according to figure 44, page 45; and internal rotation of 40 degrees, which equated to a 3 percent impairment according to figure 44 at page 45.

With regard to appellant's left elbow, the Office medical adviser found that appellant had extension of 30 degrees and flexion of 30 degrees, both of which equated to a 5 percent

[2] Dr. Klinghoffer concluded that based on the standards enunciated in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had lost approximately 25 percent of function in his left shoulder, about 8 to 10 percent function in his left wrist, and 15 percent of his left thumb function.

impairment according to figure 32, page 40, for a total 10 percent impairment. With regard to appellant's left wrist, the Office medical adviser found that appellant had dorsiflexion of 40 degrees, which equated to a 0 percent impairment, and palmar flexion of 50 degrees, which equated to a 2 percent impairment according to figure 26, page 36, for a total 2 percent impairment. With regard to appellant's left thumb, the Office medical adviser determined that appellant had extension of 40 degrees in his metacarpophalangeal joint pursuant to figure 13 at page 27, equating to a 10 percent impairment, and extension of 50 percent of his interphalangeal joint pursuant to figure 10 at page 26, equating to a 3 percent impairment, for a total thumb impairment of 13 percent. The Office medical adviser then calculated that the 13 percent thumb impairment translated to a 5 percent impairment of the left hand pursuant to the combined values chart at Table 1, page 18 of the A.M.A., *Guides.* Therefore, combining all of the above findings, the Office medical adviser arrived at a total impairment of 33 percent for the left upper extremity.

On March 22, 1994 the Office granted appellant a schedule award for a 33 percent permanent impairment of the left upper extremity[3] for the period February 6, 1994 to January 27, 1996, for a total of 118.56 weeks of compensation.

The Board finds that appellant has no more than a 33 percent permanent impairment for loss of use of his left upper extremity, for which he has received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[6] However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.[7]

In the instant case, the Office determined that appellant had a 33 percent permanent impairment of his left upper extremity by adopting the findings of the Office medical adviser, who determined the precise impairment rating by gauging the lack of function in appellant's left shoulder, left elbow, left wrist, and left thumb, and totaling them together in the combined values

[3] The Office erroneously granted an award for a permanent impairment to appellant's right upper extremity. This error is harmless, however, as it has no effect on the amount of claimant's award.

[4] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[5] 20 C.F.R. § 10.304.

[6] 5 U.S.C. § 8107(c)(19).

[7] *Thomas D. Gunthier,* 34 ECAB 1060 (1983).

chart to arrive at the total percentage of impairment in appellant's left upper extremity based on the applicable figures and tables of the A.M.A., *Guides.*

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 33 percent permanent impairment for loss of use of the right upper extremity, for which he has received a schedule award from the Office, and that appellant has failed to provide probative, supportable medical evidence that he has greater than the 33 percent impairment already awarded.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 22, 1994 is hereby affirmed.

Dated, Washington, D.C.
January 12, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member