

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM W. BOWMER and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Jacksonville, Fla.

*Docket No. 97-1436; Submitted on the Record;
Issued May 20, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that he has more than a 20 percent permanent impairment of the right upper extremity.

The Board has duly reviewed the case record and concludes that appellant has not established that he is entitled to an additional schedule award.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a sheet metal worker, sustained contusion of the coccyx, tenosynovitis of the right shoulder, brachial plexus injury of the right shoulder, and aggravation of spinal stenosis at C3-4 as a result of a September 23, 1974 slip and fall during his employment. On August 24, 1995 the Office granted appellant a schedule award for a 20 percent impairment of the right upper extremity.

On August 16, 1996 appellant requested an additional schedule award. Appellant alleged that he had received a schedule award for 20 percent permanent impairment of the right upper extremity, but that this was for loss of use of his right shoulder. Appellant stated that he also had an impairment of his right hand for which he should receive an additional schedule award. The Office denied modification of the prior order, after merit review, on December 13, 1996. On February 5, 1997 appellant again requested that the Office reconsider his schedule award. In support of this request for reconsideration, appellant submitted medical reports from Dr. Sook K. Ahn, Board-certified in physical medicine and Dr. Samy F. Bishai, an orthopedic surgeon. The Office denied modification of the prior decision, after merit review, on February 13, 1997.

Section 8107 of the Federal Employees' Compensation Act¹ provides that, if there is a permanent disability involving the loss or loss of use of a member or function of the body, the

¹ 5 U.S.C. § 8107.

claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants in the evaluation of permanent physical impairment. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.²

In the present case, the Office on June 30, 1995 requested that Dr. Bishai evaluate the degree of impairment to appellant's right shoulder. On July 10, 1995 Dr. Bishai reported that he had examined appellant and that, regarding the right shoulder, appellant had retained internal rotation of 60 degrees; retained external rotation to 50 degrees; retained forward elevation to 120 degrees; retained backward elevation to 20 degrees; retained abduction to 120 degrees; retained adduction to 30 degrees; and impairment of function due to weakness, atrophy, pain or loss of sensation of 7 percent. Dr. Bishai concluded that appellant's right shoulder impairment caused an impairment of the right upper extremity of 20 percent. On July 10, 1995 an Office medical adviser reviewed Dr. Bishai's report and correlated Dr. Bishai's findings to the A.M.A., *Guides*. The Office medical adviser properly calculated that, pursuant to figures 38, 41 and 44, found on pages 43, 33 and 45 of the 4th edition of the A.M.A., *Guides*, appellant's right shoulder injury resulted in an impairment of the right upper extremity of 20 percent. The Board affirms the Office's finding that appellant's right upper extremity impairment due to his right shoulder injury does not exceed 20 percent.

In requesting an additional schedule award, appellant advised the Office that he also had an impairment to his right hand. The Office in denying appellant's requests for an additional schedule award informed appellant that the schedule award for 20 percent impairment of the right upper extremity already incorporated an award for impairment of the hand. The Board notes that the Office in 1995 only requested that Dr. Bishai evaluate appellant's right shoulder impairment. The schedule award granted in fact only measured loss of use of appellant's right shoulder. As appellant also had an accepted cervical condition, spinal stenosis of C3-4, any permanent impairment to the right upper extremity resulting from this impairment would also be compensable. The Board has noted that the schedule award provisions of the Act provide for an award for impairment to a member of the body covered by the schedule regardless of whether the cause of the disability originated in a scheduled or nonscheduled member. For this reason, a claimant may be entitled to a schedule award for impairment to an upper extremity where the cause of the impairment originates in the spine.³ The only medical evidence appellant submitted, however, which is supportive of his request for an additional schedule award for his hand condition is a January 16, 1997 report from Dr. Ahn. In this report, Dr. Ahn stated that electromyogram performed on June 21, 1993 revealed electrophysiological evidence of a subacute right C7 radiculopathy and that the magnetic resonance imaging scan of the cervical spine on June 5, 1992 revealed moderate spinal stenosis at C3-4 and mild ventral extra dural defect at C5-6 and C6-7. Dr. Ahn concluded that appellant's neck pain radiating down to his right upper extremity and right hand was related to cervical disc disease. The medical evidence

² *James J. Hjort*, 45 ECAB 595 (1994).

³ *John Litwinka*, 41 ECAB 956 (1990).

of record is not sufficient to establish entitlement to an additional schedule award as Dr. Ahn did not indicate that appellant had a permanent impairment of the hand resulting from his accepted cervical condition. In fact there is no description of appellant's hand condition, other than his noted pain, by which to calculate any impairment of appellant's hand.

Essentially, in this case, appellant has requested an additional schedule award for impairment to his right hand resulting from his accepted cervical disc condition. It is appellant's burden of proof to establish that he does have a ratable physical impairment pursuant to the Act. As appellant did not submit the medical evidence necessary to establish that he has a compensable permanent impairment of his right hand, the Office properly denied modification of the prior decision.

The decisions of the Office of Workers' Compensation Programs dated December 13, 1996 and February 13, 1997 are hereby affirmed.

Dated, Washington, D.C.
May 20, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member