

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY V. SMITH and DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, Oklahoma City, OK

*Docket No. 98-210; Submitted on the Record;
Issued November 8, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a schedule award.

On November 24, 1992 appellant, then a 32-year-old machine tool operator, filed a notice of occupational disease alleging that he suffered an elbow and hand condition as a result of his federal employment. The Office accepted the claim for lateral epicondylitis, right elbow and awarded compensation benefits. On May 17, 1993 the Office upgraded the accepted condition to include both elbows. The Office also approved left elbow arthroscopies on May 25 and August 26, 1993 and a right elbow ulnar nerve transplant on August 2, 1994.

On August 29, 1994 Dr. John F. Tompkins, a Board-certified orthopedic surgeon, performed a second opinion examination. He conducted a complete examination and conducted objective testing. Dr. Tompkins concluded that there was no disability medically connected to the employment injury.

On October 28, 1994 Dr. Stephen Conner, appellant's treating physician and a Board-certified orthopedic surgeon, indicated that appellant continued to suffer residuals from his employment injury in both shoulders and elbows. He, therefore, expressly disagreed with Dr. Tompkins conclusions.

On July 11, 1995 Dr. Griffith Miller, a family practitioner, reviewed appellant's work history and conducted a physical examination. Dr. Miller also reviewed the medical treatment appellant received and the objective evidence of record. He provided partial disability ratings to the body as a whole. In this regard, Dr. Miller found that appellant had a partial disability of 18 percent in each shoulder due to decreased range of motion. He also found that appellant had a 10 percent disability in each shoulder due to crepitanace. Dr. Miller stated that elbow injuries to both elbows resulted in 30 percent disabilities. He also indicated that appellant had a 20 percent disability in each hand due to carpal tunnel. Dr. Miller indicated that he relied on the American

Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.) in reaching his disability determinations.

On August 2, 1995 Dr. Ghazi Rayan, a Board-certified orthopedic surgeon, submitted his referee opinion due to the conflict the Office identified between the opinions of Drs. Conner and Tompkins concerning the issue of continued disability. Dr. Rayan, however, failed to address whether appellant continued to suffer residuals from his work injury. The Office, therefore, referred appellant to another physician for a referee examination.

On December 15, 1995 appellant requested a schedule award.

On January 15, 1996 Dr. Phillip L. McCown, a Board-certified orthopedic surgeon, provided an impartial medical examination pursuant to the Office's request. He reviewed appellant's medical records and his current complaints. Dr. McCown reviewed the objective testing of record and conducted a physical examination. He noted that prior to the examination appellant used his arms freely. Dr. McCown indicated that cervical x-rays were normal. He stated that appellant revealed a normal range of motion of the right shoulder. Dr. McCown stated that appellant complained of pain with pronation and supination, which was not characteristic of a true impingement syndrome. He found no crepitation of the right shoulder or atrophy in the shoulder girdle musculature. Dr. McCown noted diffuse tenderness over both the lateral and medial sides of appellant's elbows which did not represent true lateral epicondylitis. He noted a normal range of motion of the right elbow without crepitation. Dr. McCown found no atrophy of the upper arm or forearm. He found normal sensation in all the fingers of the right hand and noted that his Phalen's test was negative. Dr. McCown found no signs of carpal tunnel syndrome. He found no evidence of a Tinel's sign over the median nerve at the wrist and no Tinel's sign at the site of the transferred right ulnar nerve. Dr. McCown noted that sensation in the ulnar nerve dermatome of the right arm and hand was normal. Dr. McCown's examination of the left shoulder also revealed a normal range of motion and pain inconsistent with impingement syndrome. He found no shoulder muscle atrophy. Dr. McCown found a minimal decrease in the range of motion of the left elbow because appellant lacked 10 degrees of full extension. He noted normal wrist motion with a negative Phalen's test. Dr. McCown noted normal sensation in the left hand and noted no evidence of Tinel's sign over the left cubital tunnel or medial nerve. He found no evidence of radial nerve impingement in either forearm. Dr. McCown concluded that appellant's right lateral epicondylitis had resolved. He stated that there was minimal evidence to support a diagnosis of thoracic outlet syndrome. Dr. McCown found no good evidence to support impingement syndrome in both shoulders. He noted that appellant's absence from work did not improve his condition. Dr. McCown concluded that there was no reason to restrict appellant's use of his upper extremities. He determined that appellant suffered no limitations due to the employment injury.

On January 19, 1996 Dr. McCown again stated that he was unable to find any objective evidence for a work-related injury to appellant's right elbow or ulnar nerve. He further found that there was no objective evidence of work-related medial or lateral epicondylitis of the left elbow. Dr. McCown stated, however, that if the left radial head excision was accepted, then appellant's residual was from loss of the radial head, in addition to lacking 10 degrees of full extension.

By decision dated February 16, 1996, the Office rejected appellant's claim because the medical evidence established that the residuals of the work injury had ceased. In an accompanying memorandum, the Office found that the weight of the medical evidence rested with the opinion of Dr. McCown, the referee examiner, who opined that appellant's residuals from his work injury had resolved.

On November 26, 1996 appellant again requested a schedule award.

By decision dated July 7, 1997, the Office denied appellant's request for a schedule award. In an accompanying memorandum, the Office noted that the weight of the medical evidence was represented by the opinion of Dr. McCown, the referee examiner, who opined that appellant demonstrated no work-related loss of use of either upper extremity.

The Board finds that this case is not in posture for a decision.

In the instant case, the Office denied appellant's request for a schedule award based on the opinion of Dr. McCown, a Board-certified orthopedic surgeon and the referee examiner. The Office indicated that he opined that there was no work-related loss of either upper extremity. The Office previously accepted this claim for bilateral epicondylitis, two left elbow arthroscopies and a right elbow ulnar nerve transplant. In his referee examination, Dr. McCown concluded that as a result of the accepted surgery, the two arthroscopies, appellant sustained impairment due to loss of the radial head. He also indicated that appellant suffered a 10 degree decrease of left elbow extension as a result of his work injury. Consequently, contrary to the Office's determination, Dr. McCown did find that appellant suffered residuals from his accepted injuries. Dr. McCown, however, was not requested to provide an impairment rating pursuant to the A.M.A., *Guides*, as is required to make a schedule award determination.¹

Dr. Miller, a family practitioner, provided the only impairment rating of record. He stated that appellant had a partial impairment of 18 percent in each shoulder due to decreased range of motion, a 10 percent impairment in each shoulder due to crepitation, a 30 percent impairment in each elbow due to injuries and a 20 percent impairment in each hand due to carpal tunnel syndrome. Dr. Miller's opinion, however, is insufficient to establish appellant's entitlement to a schedule award because he failed to make specific reference to the tables or figures of the A.M.A., *Guides* explaining how the percentage of impairment was calculated.² Accordingly, this case must be remanded to the Office so that it may request clarification from its impartial referee examiner and procure a supplemental report explaining with specific references to the appropriate tables of the A.M.A., *Guides* the basis of his calculation for the percentage of impairment to appellant's upper extremities.³

¹ *George E. Williams*, 44 ECAB 530 (1993); *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

² *Kenneth D. Loney*, 47 ECAB 660 (1996).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6c (March 1995).

The decision of the Office of Workers' Compensation Programs dated July 7, 1997 is set aside and this case remanded for further development consistent with this decision.

Dated, Washington, D.C.
November 8, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member