U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN G. WACTOR and U.S. POSTAL SERVICE,
POST OFFICE, New Brunswick, NJ

Docket No. 99-919; Submitted on the Record;
Issued July 10, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has greater than a 12 percent permanent impairment of his left and right upper extremities, for which he has received schedule awards.

The Board finds that the case is not in posture for decision due to an unresolved conflict in medical opinion evidence.

The Office of Workers' Compensation Programs accepted that on October 25, 1993 appellant, then a 50-year-old mailhandler, sustained entrapment of the ulnar nerves and tardy ulnar palsy, causally related to factors of his federal employment. He subsequently underwent bilateral transposition of the ulnar nerves on January 3 and February 22, 1995. However, appellant remained symptomatic.

On October 20, 1997 appellant requested a schedule award for bilateral upper extremity permanent impairment.

In support of his request appellant submitted a February 22, 1996 report from his treating Board-certified orthopedic surgeon, Dr. Steven L. Nehmer, which noted that he was treating appellant for tardy ulnar palsy and had been since July 11, 1994. Dr. Nehmer noted that appellant was still having pain and some swelling in his right elbow and he recommended further neurologic testing.

By report dated August 5, 1996, Dr. Dong W. Cho, a Board-certified physiatrist, indicated that nerve conduction studies and electromyographic (EMG) studies were performed on appellant on July 19, 1994, during which he complained of stiffness and soreness in his fingers, cramping and pain in both elbows, and a numbness sensation in both hands and some numbness in the elbow area. From testing, Dr. Cho found that the flexor carpi ulnaris, first dorsal interossei and abductor digiti minimi still showed decreased recuritment patterns as well

as neuropathic configurations and he diagnosed persistent bilateral tardy ulnar syndrome resulting in bilateral ulnar neuropathy. No spontaneous denervation potentials were noted.

By report dated September 3, 1997, Dr. Nicholas P. Diamond, a Board-certified osteopathic pain management specialist, reviewed appellant's history and treatment, noted that at that time appellant complained of bilateral elbow numbness and cramps, right greater than left, and weakness of his grip strength. Dr. Diamond noted that appellant had numbness in both hands and elbow pain at a level 5 out of 10 as objectified by using a visual analogue scale. Upon physical examination, he noted positive bilateral Tinel's signs at the medial epicondyles, with motor strength testing at grade 4/5 and abnormal bulk, and that upon sensory testing, appellant demonstrated abnormal sensorum to light touch and to pin prick at the ulnar nerve distributions bilaterally. Dr. Diamond diagnosed bilateral elbow tardy ulnar palsy, neuropathy per electromyogram (EMG) and nerve conduction studies and, relying on Table 16, page 57 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, he opined that appellant had a 40 percent impairment for the right ulnar nerve entrapment at the elbow and a 30 percent impairment for the left ulnar nerve entrapment at the elbow. The Board notes that Table 16 on page 57 is entitled "upper extremity impairment due to entrapment neuropathy." Guidance from the A.M.A., *Guides* text states that an alternate method for calculating impairment due to entrapment neuropathy could be implemented using Table 15, page 54 and advised that both should not be used together.

On November 25, 1997 the Office referred Dr. Diamond's report to an Office medical adviser and requested that he determined the appropriate percentage loss as per the A.M.A., *Guides*.

In response, the Office medical adviser submitted only a calculation sheet without any narrative explanation as to how and why he arrived at the percentage impairment calculated. The Office medical adviser used Table 15, page 54, entitled "maximum upper extremity impairments due to unilateral sensory or motor deficits or combined deficits of the major peripheral nerves,"[1] and calculated that appellant had a 12 percent permanent impairment of both his right and left upper extremities. On Table 15 the Office medical adviser used the maximum percentage of upper extremity impairment "due to motor deficit" only as the basis for his calculations. The Office medical adviser's numerical opinion, without a narrative explanation creates a conflict in medical opinion evidence on the issue of the nature and extent of appellant's permanent impairment, which requires resolution.

By decision dated November 5, 1998, the Office hearing representative found that appellant had no greater than a 12 percent bilateral impairment of both upper extremities.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

[1] The Board notes that appellant's sensory and motor deficits were bilateral and not unilateral.

Consequently, the case must be remanded so that the Office may refer appellant, together with the case record, a statement of accepted facts, and specific questions to be addressed to an appropriate Board-certified specialist for an examination and a rationalized opinion as to the extent of appellant's bilateral upper extremity impairment.

The decision of the Office of Workers' Compensation Programs dated November 5, 1998 is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, D.C.
July 10, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member