

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD J. POMPIZZI and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 99-1012; Submitted on the Record;  
Issued July 10, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 15 percent permanent impairment of both arms for which he received a schedule award.

On June 28, 1994 appellant, then a 45-year-old rigger, filed a claim alleging that he developed carpal tunnel syndrome in both hands, which was causally related to his federal employment. The Office of Workers' Compensation Programs accepted the claim for bilateral carpal tunnel syndrome and authorized surgery for each wrist. Appellant retired from federal employment in June 1994.

On January 26, 1996 appellant filed a claim for a schedule award. Appellant submitted a December 11, 1995 medical report from Dr. David Weiss, an osteopath, which evaluated him for permanent impairment arising from his accepted employment injury in accordance with the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*, (fourth edition, 1993). Dr. Weiss determined that appellant sustained a 20 percent impairment of the right and left wrist based on entrapment neuropathy of the median nerve in each wrist pursuant to Table 1b, page 57 of the A.M.A., *Guides*.

The Office referred appellant for a second opinion to Dr. Andrew Sattel, a Board-certified orthopedic surgeon, for an evaluation of the extent of any permanent impairment arising from his accepted employment injury in accordance with the A.M.A., *Guides*. Dr. Sattel determined that appellant sustained a 10 percent impairment of the right and left upper extremities.

Dr. Sattel's report and the case record were referred to the Office's medical adviser who determined that appellant sustained a 10 percent impairment of the right arm and a 10 percent impairment of the left arm.

Based on the Office medical adviser's review of Dr. Sattel's report, in a decision dated June 13, 1996, the Office granted appellant a schedule award for a 10 percent impairment of both the right and left arms.

Appellant, through his attorney, requested a hearing before an Office hearing representative. In an August 21, 1996 decision, the hearing representative vacated the decision dated June 13, 1996 and remanded the case to the district Office for a *de novo* decision. The hearing representative requested that the Office clarify whether Dr. Sattel based his impairment rating on the A.M.A., *Guides*. The hearing representative further provided that, if it was determined that Dr. Sattel utilized the A.M.A., *Guides* (fourth edition) to reach his opinion, then a conflict in medical opinion existed and the case should be referred for a referee opinion.

In a letter dated September 11, 1996, Dr. Sattel confirmed that he utilized the fourth edition of the A.M.A., *Guides* to determine appellant's impairment rating.

In a letter dated October 2, 1996, the Office referred appellant to Dr. Lawrence H. Schneider, an orthopedic surgeon, to resolve the medical conflict regarding the extent of permanent impairment arising from appellant's accepted employment injury. The Office provided Dr. Schneider with a complete case record and a statement of accepted facts.

In a medical report dated October 23, 1996, Dr. Schneider indicated that before he could make a determination on the extent of any permanent impairment sustained by appellant an additional electrodiagnostic test must be obtained.

Appellant was referred to Dr. Cynthia A. Farrell, an osteopath, who performed electromyogram (EMG) and nerve conduction studies (NCS) tests. Dr. Farrell issued a report dated February 12, 1997, which discussed the results of the NCS and EMG tests. The NCS test revealed prolongation of the bilateral median nerve distal motor latency with the ulner responses within normal limits. The EMG indicated that the bilateral C5-T1 myotomes were within normal limits. Dr. Farrell concluded that appellant suffered from mild bilateral carpal tunnel syndromes with no median nerve death.

On April 7, 1997 Dr. Schneider issued an addendum report, which included consideration of the EMG and NCS tests performed by Dr. Farrell. Dr. Schneider determined appellant had ongoing mild neuropathy, with some measure of permanent impairment and assessed this impairment at 15 percent of the hands.

On April 17, 1997 the Office medical adviser reviewed Dr. Schneider's report dated April 7, 1997 and affirmed his findings that appellant had a 15 percent impairment of both arms.

By decision dated November 10, 1997, the Office granted appellant a schedule award for a 15 percent permanent impairment to his right and left arm.

By letter dated November 17, 1997, appellant, through his attorney, requested a hearing before an Office hearing representative. The hearing was held on June 24, 1998, whereby appellant's attorney presented the basis of his appeal. The attorney argued that the medical evidence lacked sufficient rationale to carry any probative value. Dr. Schneider did not provide

reasoning for assessing appellant's impairment at 15 percent for each arm and that Dr. Schneider did not reference specific tables or charts used in the A.M.A., *Guides*.

By decision dated October 22, 1998, the hearing representative affirmed the Office's prior decision.

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

Section 8107 of the Federal Employees' Compensation Act, specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter, which rests in the sound discretion of the Office.<sup>1</sup> For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, as the standard for determining the percentage of permanent impairment and the Board has concurred in such adoption.<sup>2</sup>

The Office properly determined that there was a conflict in the medical evidence between Dr. Sattel, an Office referral physician who found a 10 percent impairment in each arm and appellant's attending osteopath, Dr. Weiss, who found a 20 percent impairment in each arm. The Office properly referred the case to an impartial medical examiner, Dr. Schneider to serve as an impartial medical specialist.<sup>3</sup>

The Board has carefully reviewed Dr. Schneider's reports dated October 23, 1996 and April 7, 1997, which determined appellant's left and right upper extremity impairment and notes that Dr. Schneider did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.<sup>4</sup> Specifically, Dr. Schneider noted a loss of grip strength and also noted medical neuropathy but did not cite to tables or charts to confirm his impairment rating determination.

Also, the Office medical adviser who reviewed Dr. Schneider's reports did not attempt to correlate findings from Dr. Sattel's reports to specific provisions in the A.M.A., *Guides*. Consequently, the medical conflict remains unresolved as it is not clear how Dr. Schneider's findings correlate to the A.M.A., *Guides*.

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<sup>1</sup> *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>2</sup> *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961), *Francis John Kilcoyne*, 38 ECAB 168 (1987).

<sup>3</sup> Section 8123(a) of the Act provides in pertinent part: "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" 5 U.S.C. § 8123(a). When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence. *William C. Bush*, 40 ECAB 1064, (1989).

<sup>4</sup> Dr. Sattel's April 7, 1997 report also related appellant's impairment to his hands instead of his arms. Dr. Sattel did not explain why appellant's impairment did not affect the arms; see *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

In a situation where the Office secures an opinion from an impartial medical specialist for the purposes of resolving a conflict in the medical evidence and the opinion requires further clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report and have a proper evaluation done.<sup>5</sup>

Therefore, in order to resolve the conflict in the medical opinions the case will be remanded to the Office for referral of the case record, including a statement of accepted facts and, if necessary, appellant, to Dr. Schneider for a supplemental report regarding the extent of his left and right upper extremity impairment as determined in accordance with the relevant standards of the A.M.A., *Guides*. If Dr. Schneider is unwilling or unable to clarify and elaborate on his opinion, the case should be referred to another appropriate impartial medical specialist.<sup>6</sup> After such further development as the Office deems necessary, an appropriate decision should be issued regarding the extent of appellant's left and right upper extremity impairment.

The October 22, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

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

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *Albert Vervalde*, 36 ECAB 233 (1984).

<sup>6</sup> *See Harold Travis*, 30 ECAB 1071, 1078-79 (1979).