U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. MITCHELL and U.S. POSTAL SERVICE,
POST OFFICE, Decatur, IL

Docket No. 99-310; Submitted on the Record;
Issued June 1, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has any permanent impairment of his upper extremities for which he is entitled to receive a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no permanent impairment of his upper extremities for which he is entitled to receive a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[2] including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[3] Section 8107 of the Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[4] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*, 4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.[5]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] 5 U.S.C. § 8107(a).

[5] *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

In this case, on October 7, 1996 the Office accepted that appellant, then a 40-year-old distribution clerk, developed bilateral carpal tunnel syndrome in the performance of duty. The Office authorized bilateral carpal tunnel release surgery, which was performed on the right side on December 9, 1996, and on the left side on January 3, 1997. On September 18, 1998 appellant filed a claim for a schedule award. In a decision dated August 21, 1998, the Office determined that appellant is not entitled to receive a schedule award.

In support of his claim for a schedule award for his bilateral carpal tunnel syndrome with bilateral release surgery, appellant submitted medical reports dated August 12 and December 4, 1997, together with corresponding treatment notes, from Dr. Robert R. Kraus, a treating Board-certified orthopedic surgeon. In his August 12, 1997 attending physician's form report, Dr. Kraus indicated that appellant had a 20 percent permanent impairment of his right upper extremity and a 10 percent permanent impairment of his left upper extremity, but did not provide any explanation for his conclusion. In a follow-up report dated December 4, 1997, accompanied by the relevant treatment notes, Dr. Kraus stated that he most recently examined appellant on August 1, 1997, at which time appellant had full pronation and supination, and flexion and extension were equal bilaterally at 60 and 80 degrees respectively. Dr. Kraus further stated that appellant had good grip strength and demonstrated no abnormal sensory findings and no atrophy. Dr. Kraus did not reference any specific sections of the A.M.A., *Guides*.

In a memorandum dated December 15, 1997, an Office medical adviser, having reviewed Dr. Kraus' reports at the Office's request, stated that, pursuant to the fourth edition of the A.M.A., *Guides*, full supination and pronation of the upper extremities bilaterally, as described by Dr. Kraus, equates to zero percent permanent impairment.[6] Similarly, 80 degrees of wrist flexion and 60 degrees of wrist extension bilaterally also equate to 0 percent permanent impairment.[7] As Dr. Kraus further reported good grip strength, well-healed incisions, and no atrophy or abnormal sensory findings, the Office medical adviser concluded that there was no objective evidence of residual deficits from medial nerve compression and, therefore, no ratable permanent impairment of either upper extremity.

The Board has held that, when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.[8] The Board concludes that in the present case the Office medical adviser properly applied the A.M.A., *Guides* to the description of the impairment provided by Dr. Kraus. There is no other evidence of record that appellant has any permanent impairment of his upper extremities and therefore appellant is not entitled to receive a schedule award.

[6] A.M.A., *Guides*, fourth edition, Figure 33, page 3/40, Figure 35, page 3/41.

[7] A.M.A., *Guides*, fourth edition, Figure 26, page 3/36.

[8] *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

The decision of the Office of Workers' Compensation Programs dated August 21, 1998 is affirmed.[9]

Dated, Washington, D.C.
June 1, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[9] Following the Office's August 21, 1998 decision, by letters dated October 13, 1998 and post marked October 14, 1998, appellant simultaneously notified the employing establishment, the Branch of Hearings and Review and the Employees' Compensation Appeals Board, that he was exercising his "right to appeal the decision." Upon its receipt of appellant's letter on October 16, 1998, the Board docketed appellant's request for an appeal. Subsequently, on November 20, 1998, the Branch of Hearings and Review issued a decision stating that appellant was not entitled to an oral hearing in his case, as his request was not timely filed. The Board finds that the Office's November 20, 1998 decision is null and void as both the Board and the Office cannot have jurisdiction over the same issue in the same case. 20 C.F.R. § 501.2(c); *Douglas E. Billings*, 41 ECAB 880 (1990).