U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY R. PIWOWARCZYK and DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO & FIREARMS, Washington, DC

Docket No. 99-1089; Submitted on the Record;
Issued June 5, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he has more than an eight percent permanent impairment of his right upper extremity.

The Board finds that appellant did not meet his burden of proof to establish that he has more than an eight percent permanent impairment of his right upper extremity.

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* (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).

On April 3, 1992 appellant, then a 31-year-old special agent, sustained an employment-related partial right rotator cuff tear, left ankle sprain and right ring finger fracture. In September 1992 appellant underwent a rotator cuff repair which was authorized by the Office. By award of compensation dated June 18, 1996, the Office granted appellant a schedule award for an eight percent permanent impairment of his right upper extremity.[6] The Office based its schedule award determination on the April 16, 1996 report of an Office district medical Director who evaluated the findings of Dr. John A. Gragnani, a physician Board-certified in physical medicine and rehabilitation to whom the Office referred appellant. By decision dated and finalized November 18, 1998, an Office hearing representative denied modification of the Office's June 18, 1996 decision.

In his April 9, 1996 report, Dr. Gragnani reported the findings of his examination which included range of motion, sensory and motor testing of appellant's right upper extremity. Dr. Gragnani properly noted that appellant's shoulder abduction of 140 degrees entitled him to a 2 percent impairment rating and that his internal rotation of 60 degrees also entitled him to a 2 percent impairment rating.[7] He correctly determined that appellant had a 3 percent impairment rating for sensory loss related to his shoulder which was calculated by multiplying the 60 percent value for Grade III pain times the 5 percent maximum value for pain associated with the relevant nerve distribution.[8] Dr. Gragnani then properly determined that appellant had a five percent impairment of his right ring finger due to limited extension at the metacarpophalangeal joint of the finger.[9]

In his April 16, 1996 report, the Office district medical Director noted that Dr. Gragnani had properly determined that appellant had a seven percent impairment due to limited motion and sensory loss related to his shoulder problems. He also noted that Dr. Gragnani properly indicated that appellant had a five percent impairment of his right ring finger related to limited motion of the finger, but correctly determined that this figure should be converted to a one percent impairment of his right upper extremity.[10] The Office district medical Director then properly used the Combined Values Chart to combine the seven and one percent impairment values to determine that appellant had a total right upper extremity impairment of eight percent.[11]

The record also contains an April 24, 1995 report in which Dr. Jeffrey Scheirer, an attending osteopath, determined that appellant had a 50 percent permanent impairment of his right upper extremity and a 20 percent permanent impairment of his right ring finger. However, the opinion of Dr. Scheirer is of limited probative value in that Dr. Scheirer failed to provide an

[6] The award ran for 24.96 weeks from April 9 to September 30, 1996.

[7] *See* A.M.A., *Guides* at 43-45.

[8] *Id.* at 48-49, 54.

[9] *Id.* at 31-35.

[10] *Id*. at 18-19.

[11] *Id.* at 322-24.

explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.[12]

As the April 16, 1996 report of the Office district medical Director provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[13]

The decision of the Office of Workers' Compensation Programs dated and finalized November 18, 1998 is affirmed.

Dated, Washington, D.C.
June 5, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[12] *See James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

[13] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).