U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND W. WIMSATT and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Springfield, MO

Docket No. 01-131; Submitted on the Record;
Issued August 14, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a three percent impairment of his left upper extremity, for which he received a schedule award.

On November 19, 1997 appellant, then a 50-year-old mail processing equipment mechanic, sustained an injury to his left arm while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left carpal tunnel syndrome. Additionally, the Office authorized surgery for left carpal tunnel release on February 17, 1999.

By decision dated June 7, 2000, the Office granted appellant a schedule award for a three percent permanent impairment of his left upper extremity. The award covered a period of 9.36 weeks. On October 17, 2000 appellant filed an appeal with the Board.[1]

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act[2] sets forth 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 loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Act's implementing regulation has adopted the American

[1] The record on appeal includes evidence that was not submitted to the Office prior to the issuance of its June 7, 2000 decision. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

[2] 5 U.S.C. § 8107.

Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.[3]

On February 23, 2000 the Office referred appellant to Dr. J. Newt Wakeman, Jr., a Board-certified orthopedic surgeon. In a report dated March 21, 2000, Dr. Wakeman found that appellant had a two percent permanent impairment due to loss of wrist flexion. Although he noted complaints of grip strength weakness and provided measurements for both the left and right hand, Dr. Wakeman did not otherwise comment on appellant's grip strength.

The Office medical adviser reviewed Dr. Wakeman's finding and concurred with his assessment. Additionally, the Office medical adviser calculated a three percent impairment due to motor deficit or weakness in the distribution of the median nerve below the mid-forearm. According to the Office medical adviser, the combined impairments represented an overall rating of a five percent permanent impairment of the left upper extremity.

Notwithstanding the recommendation of its medical adviser, the Office granted appellant a schedule award for a three percent permanent impairment of the left upper extremity. It is unclear from the record whether the Office disagreed with the findings of its medical adviser or merely overlooked certain aspects of his April 2, 2000 report. Inasmuch as the Board's decisions are final as to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.[4]

It is also unclear from the record why Dr. Wakeman, the Office referral physician, declined to provide an impairment rating due to appellant's loss of grip strength.[5] The Office medical adviser noted this anomaly and specifically commented that "the decrease in strength for someone who does manual labor is probably relevant … to consideration of an overall impairment rating."[6]

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office

[3] 20 C.F.R. § 10.404 (1999).

[4] 20 C.F.R. § 501.6(c); *see William A. Couch*, 41 ECAB 548, 553 (1990).

[5] Under the A.M.A., *Guides*, loss of grip strength is determined by a formula of abnormal strength subtracted from normal strength and then divided by normal strength to yield a percentage of strength loss index. The grip strength of the affected hand is compared with the grip strength of the opposite extremity, which is assumed to be normal. If both extremities are affected, the strength measurements are compared to the average normal strengths listed in Tables 31 to 33. A.M.A., *Guides*, pp. 64-65 (4th ed. 1993). The A.M.A., *Guides* specifically note that, "If there is suspicion or evidence that the subject is exerting less than maximal effort, the grip strength measurements are invalid for estimating impairment." *Id*. at 65. An alternative method for determining impairment due to weakness (loss of power and motor deficits) is set forth under Tables 12 and 15, at pages 49 and 54 of the A.M.A., *Guides*. However, these two methods are mutually exclusive. Federal (FECA) Procedural Manual, Part 3 -- Medical, *Schedule Award*, Chapter 3.700 (October 1995).

[6] In support of this statement, the Office medical adviser referenced Tables 31 and 32. A.M.A., *Guides*, pp. 64-65 (4th ed. 1993).

shares responsibility in the development of the evidence to see that justice is done.[7] Once the Office undertakes development of the record it has the responsibility to do so in a proper manner.[8]

In light of the questionable probative value of Dr. Wakeman's report and the Office's apparent failure to consider its medical adviser's April 2, 2000 report, the case is remanded to the Office for further development. After such further development of the record as the Office deems necessary, a *de novo* decision shall be issued.

The June 7, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
August 14, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

[7] *William J. Cantrell*, 34 ECAB 1223 (1983).

[8] *Henry G. Flores*, 43 ECAB 901, 905 (1992).