

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEROME WLODARCZYK and GENERAL SERVICES ADMINISTRATION,
DISTRIBUTION CENTER, Burlington, NJ

*Docket No. 98-1909 & No. 01-485; Oral Argument Held January 25, 2001;
Issued February 26, 2001*

Appearances: *Jerome Wlodarczyk, pro se; Miriam D. Ozur, Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established a head injury or additional emotional condition causally related to his employment injury; and (2) whether appellant has more than a 28 percent permanent impairment of his leg.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a crush injury to the left foot in the performance of duty on November 3, 1992. By decision dated March 13, 1997, the Office determined that appellant had not established an emotional condition as causally related to the employment injury. In a decision dated March 10, 1998, an Office hearing representative affirmed the prior decision.

By decision dated July 29, 1998, the Office determined that appellant had established a reactive depression as a consequence of the employment injury. The Office also determined that appellant had not established a head injury, nor any additional emotional conditions as a consequence of a head injury.

In a decision dated July 13, 1999, the Office issued a schedule award for a 28 percent permanent impairment to the left leg.

The Board finds that appellant has not established a head injury or additional psychiatric conditions as causally related to the November 3, 1992 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including that any disability or

¹ 5 U.S.C. §§ 8101-8193.

specific condition for which compensation is claimed is causally related to the employment injury.²

Appellant has submitted a March 25, 1996 report from Dr. Edward Tobe, an osteopath, opining that appellant sustained mood disorder secondary to closed-head injury with depressive features, and cognitive disorder. Dr. Tobe reported in his history that appellant had been “injured at work; when he fell, he hit his head. He has been diagnosed with a closed-head injury.” The Board finds that the record is not sufficient to support the accuracy of the history provided by Dr. Tobe. Appellant did not provide a detailed description of the November 3, 1992 incident; his initial statement does not report hitting his head, or describe a fall of any kind. He indicated that his reach truck struck another lift, causing a crush injury to his foot. The other witness statement also does not indicate that appellant fell or hit his head. The contemporaneous medical reports of treatment, including hospital reports, do not report a head injury or symptoms suggestive of a head injury. There is a December 23, 1992 report from Dr. Donald A. Barone, an osteopath, providing a history that appellant had fallen and hit his head on the floor during the employment injury, without further detail. Dr. Barone continued to treat appellant for headaches, but his subsequent reports do not discuss a head injury.³ In view of appellant’s initial description of the incident, the witness statement and the contemporaneous evidence, the Board finds that it is not factually established that appellant fell and struck his head during the employment incident on November 3, 1992.⁴

Accordingly, medical evidence that relies on a factual determination that appellant struck his head on the floor at work on November 3, 1992 is of diminished probative value. It is well established that medical reports based on an incomplete or inaccurate history are of reduced probative value.⁵ The record does not contain a reasoned medical opinion, based on an accurate background, establishing a head injury or psychiatric condition as a consequence of a head injury. The Board also notes that the record contains a September 13, 1996 report from Dr. Walden M. Holl, Jr., a psychiatrist serving as an Office second opinion referral physician, opining that appellant was suffering from a chronic personality disorder “that bears no relationship to the accident or the physical problems arising from the accident.”⁶

Accordingly, the Board finds that the evidence is not sufficient to establish any additional conditions as causally related to the November 3, 1992 employment injury.

The Board further finds that appellant has not established more than a 28 percent permanent impairment to the left leg.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ In an April 21, 1994 report, for example, Dr. Barone indicated that appellant’s headaches tended to happen when he became worried about his foot injury.

⁴ Inconsistencies in the evidence may cast doubt as to whether a specific incident occurred as alleged. *See Gene A. McCracken*, 46 ECAB 593 (1995).

⁵ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *James A. Wyrich*, 31 ECAB 1805 (1980).

⁶ Dr. Holl also indicated that appellant had a reactive depression from the leg pain residual of the employment injury; the Office, as noted above, accepted a reactive depression.

Section 8107 of the Federal Employees' Compensation 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.⁷ 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 has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁸

In this case, an attending physician, Dr. David Weiss, an osteopath, opined in a February 10, 1999 report that appellant had a 28 percent leg impairment. Dr. Weiss indicated that he found a 25 percent impairment for muscle weakness under Table 39,⁹ a 3 percent impairment for ankylosis of the second and third toes under Table 61,¹⁰ and a 2 percent impairment metatarsal fracture under Table 64.¹¹ These impairments are combined under the Combined Values Chart for a 28 percent impairment.¹²

An Office medical adviser, in a report dated June 23, 1999, concurred with the 28 percent determination. The Board finds no probative medical evidence establishing more than a 28 percent impairment to the leg. The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.¹³ In this case, the schedule award runs for 28 percent of the maximum 288 weeks for a leg impairment,¹⁴ or 80.64 weeks, from the date of maximum medical improvement.¹⁵

⁷ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

⁸ *A. George Lampo*, 45 ECAB 441 (1994).

⁹ A.M.A., *Guides*, (4th ed. 1993) 77, Table 39.

¹⁰ *Id.*, 82, Table 61.

¹¹ *Id.*, 86, Table 64.

¹² *Id.*, 322, 24. The A.M.A., *Guides* note that the method for combining impairments is based on the idea that a second or succeeding impairment should apply not to the whole, but only to the part that remains after the first impairments have been applied.

¹³ *Albert Valverde*, 36 ECAB 233, 237 (1984).

¹⁴ 5 U.S.C. § 8107(c).

¹⁵ The compensation paid is for the permanent impairment to the leg; the issue of disability for work is a separate issue that is not currently before the Board.

The decisions of the Office of Workers' Compensation Programs dated July 13, 1999 and July 29, 1998 are affirmed.

Dated, Washington, DC
February 26, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member