U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD PIPER and DEPARMENT OF THE NAVY, NAVAL SEA SYSTEMS COMMAND, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 00-1007; Submitted on the Record;
Issued June 11, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 10 percent permanent impairment of each of his upper extremities for which he has received a schedule award.

The Board has duly reviewed the case on appeal and finds it not in posture for decision due to an unresolved conflict of medical opinion.

Appellant, a 30-year-old machinist, filed a notice of occupational disease on June 14, 1994 alleging that he developed carpal tunnel syndrome due to factors of his federal employment. The Office of Workers' Compensation Programs accepted his claim for bilateral carpal tunnel syndrome and authorized surgery. Appellant requested a schedule award and by decision dated January 11, 1996, the Office granted appellant a schedule award for a five percent permanent impairment of each of his upper extremities.

Appellant filed a second claim for occupational injury on May 20, 1997. The Office accepted this claim for bilateral epicondylitis. Appellant requested a schedule award on May 4, 1998. By decision dated January 19, 1999, the Office granted appellant a schedule award for an additional five percent permanent impairment of each of his upper extremities. Appellant requested an oral hearing and by decision dated November 18, 1999 the hearing representative affirmed the January 19, 1999 decision of the Office.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants,

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R § 10.304.

good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Appellant's attending physician, Dr. Michael McManus, Board-certified in preventative medicine, performed a physical examination and determined that appellant had additional impairment of pain and loss of strength due to his conditions of bilateral carpal tunnel syndrome, chronic bilateral lateral epicondylitis and chronic bilateral medial epicondylitis. He correlated his findings with the A.M.A., *Guides* for the peripheral nerves involved and recommended that appellant receive an additional 14 percent permanent impairment of each upper extremity.

The Office referred appellant for a second opinion evaluation with Dr. Richard Camp, a Board-certified orthopedic surgeon. In his November 16, 1998 report, Dr. Camp found that appellant had no additional impairment due to his accepted condition of carpal tunnel syndrome. He stated that appellant did not have abnormal electrodiagnostic studies and was not entitled to an impairment rating for this condition under the A.M.A., *Guides.* Dr. Camp stated, "In my opinion, there is no ratable impairment from the standpoint of his forearm and arm discomfort, as this most likely would fit best as an accumulative trauma disorder." He stated that appellant did not fit the picture for medial and lateral epicondylitis as his symptoms were much more diffuse. Dr. Camp noted that Dr. McManus rated appellant's impairment based on nerve injuries. He stated that appellant had no cutaneous nerve injuries. Dr. Camp stated, "[I]t is difficult for this examiner to equate a tendon or muscle problem with the equivalent of a nerve problem as it is a completely different set of symptoms and [appellant] has no objective evidence of nerve injuries." He concluded that appellant had no impairment based on objective evidence.

Dr. McManus reviewed this report on December 9, 1998 and noted that the A.M.A., *Guides* did not provide a specific methodology for calculating impairment due to epicondylitis. He stated:

> "The A.M.A., *Guides* give multiple ways in which impairments for tendinitis can be estimated, including joint crepitants and triggering or intrinsic stiffness for stenosing flexor tenosynovitis of the digits. The methods I used were in a rationalized effort to use the information in the A.M.A., *Guides* to arrive at a comparable impairment rating for medial and lateral epicondylitis in [appellant's] specific case. These conditions result in a painful disorder of the elbow that limits activity tolerance or function. By using a similar sensory nerve distribution impairment and estimate of disability or pain interfering with function can be made and thus an estimate of the impairment for these conditions."

Dr. McManus also disagreed with the opinion that appellant had no additional impairment due to his carpal tunnel syndrome, noting that Dr. Camp did not provide findings in support of his rating of five percent.

The Board notes that the A.M.A., *Guides* address findings based on pain in two separate sections. The A.M.A., *Guides* state, "A patient with wrist or hand pain or other symptoms *may* not have evidence of a permanent impairment. Alteration of the patient's daily activities or

work-related tasks may reduce the symptoms. Such an individual should be not considered to the permanently impairment under *Guides* criteria."[3] The A.M.A., *Guides* further state, "*Only persistent pain or discomfort that leads to permanent loss of function, in spite of maximum effort toward medical rehabilitation and allowing an optimal period of time for physiologic adjustment, should be evaluated as a permanent impairment.*"[4] (Emphasis in the original.)

Section 8123(a) of the Act,[5] provides, "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." In this case, appellant's attending physician, Dr. McManus, opined that appellant's accepted conditions of carpal tunnel syndrome and lateral epicondylitis were permanent and ratable under the A.M.A., *Guides* due to sensory and motor deficits. He also found additional impairment due to carpal tunnel syndrome. Dr. McManus' report substantiates that appellant had persistent pain which was ratable under the A.M.A., *Guides* and provided an impairment rating for the accepted condition of bilateral lateral epicondylitis as well as additional impairment due to the accepted condition of carpal tunnel syndrome.

The second opinion physician, Dr. Camp, found that appellant had no objective signs of bilateral lateral epicondylitis, concluded that appellant's upper extremity condition was a "cumulative trauma" which would resolve with a change of activities and opined that this condition was not ratable under the A.M.A., *Guides*. He further found that appellant had normal nerve conduction tests following surgery indicating no additional impairment due to his carpal tunnel syndrome.

There is a conflict of medical opinion regarding the diagnosis of appellant's condition, permanent nature of appellant's accepted conditions of carpal tunnel syndrome and bilateral epicondylitis, whether these conditions resulted in pain, sensory or motor deficits which were ratable under the A.M.A., *Guides* and whether appellant has any additional impairment due to carpal tunnel syndrome. The Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician to determined the extent of appellant's permanent impairment due to his accepted employment-related conditions. After this and such other developments as the Office deems necessary, the Office should issue an appropriate decision.

[3] A.M.A., *Guides*, 19.

[4] A.M.A., *Guides*, 48.

[5] 5 U.S.C. §§ 8101-8193, 8123(a).

The November 18 and January 19, 1999 decisions of the Office of Workers' Compensation Programs are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, DC
June 11, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member