U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD L. HUDDLESTON and DEPARTMENT OF THE NAVY, BANGOR TRIDENT REFIT FACILITY, Silverdale, WA

Docket No. 00-2184; Submitted on the Record;
Issued June 14, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant had more than a one percent permanent impairment of each upper extremity for which he received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained more than a one percent permanent impairment of each upper extremity for which he received 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*

[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] 5 U.S.C. § 8107(a).

Evaluation of Permanent Impairment (hereinafter, the A.M.A., *Guides)* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[5] The schedule award provisions of the Act provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.[6] The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.[7] For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[8]

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."[9] This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[10]

On September 15, 1997 appellant, then a 29-year-old shipwright, filed an occupational disease claim alleging that he sustained carpal tunnel syndrome in the performance of duty due to repetitive use of the hands. By decision dated May 27, 1998, the Office accepted his claim for bilateral carpal tunnel syndrome.

On April 10, 1998 appellant filed a claim for a schedule award.

Appellant underwent surgery for his bilateral carpal tunnel syndrome on November 24 and December 21, 1998.

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

[6] 5 U.S.C. § 8107.

[7] *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

[8] *Luis Chapa, Jr.*, 41 ECAB 159 (1989).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); *see John H. Smith*, 41 ECAB 444, 448 (1990).

[10] *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

By decision dated June 24, 1999, the Office granted appellant a schedule award for 6.24 weeks based on a combined 2 percent permanent impairment of the right and left upper extremities.[11]

In a narrative report dated May 10, 1999, Dr. Michael S. McManus, a Board-certified specialist in preventive medicine, stated that appellant had residual mild tenderness at both wrists at the area of the surgical incisions but no pain or stiffness, paresthesias, dysthesia, or night pain. He noted mild residual bilateral grasp weakness and a persistent sense of increased fatigability of both hands with occasional cramping with overuse. Dr. McManus stated:

> "Well-healed carpal tunnel release surgical scar bilaterally. Minimally tender about right. No residual induration. Wrist range of motion full and symmetric bilaterally. No intrinsic hand muscle atrophy. No skin or nail changes. Circulation intact. Negative Tinel's [sign] over median nerve at carpal tunnel bilaterally. Phalen's maneuver weakly positive on right at 30 seconds, negative on left at 30 seconds. Sensation intact and symmetric throughout to pinprick, light touch, cold and vibratory stimuli. Two-point discrimination intact all fingers at less than or equal to 0.6 [centimeters]. Bilateral grasp and thumb opposition strength intact (5/5), but mild decreased thumb abduction strength bilaterally (4+/5). No triggering or intrinsic stiffness of digits."

Dr. McManus determined appellant's permanent impairment rating as follows:

> "For residual status post right carpal tunnel release; no sensory deficit or sensory deficit equal to zero. Motor deficit minimal grade 4+/5 estimated at 10 percent from Table 12a, page 49. From Table 15, page 54, again maximal upper extremity impairment for motor deficit of median nerve below mid forearm equal to 10 percent. Right upper extremity impairment then also equal to 0.1 x 10 percent equal to 1 percent.
>
> "*Final combined right upper extremity impairment or PPI [permanent partial impairment] equal to 1 [percent.*
>
> "*Final left upper extremity impairment or PPI equal to one percent.*" (Emphasis in the original.)

In a memorandum dated June 6, 1999, an Office medical adviser reviewed Dr. McManus' May 10, 1999 report and stated:

> "[Appellant] has residual mild tenderness at the scar sites bilaterally with slight to mild residual weakness of thumb abduction bilaterally and … 4/5 decreased thumb abduction bilaterally with normal sensation. I agree with the impairment rating of Dr. McManus that [appellant] has a mild motor deficit of the median

[11] The record contains additional evidence which was not before the Office at the time it issued its June 24, 1999 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

nerve below the elbow estimated at 10 percent from Table 12a, page 49 and from Table 15, page 54 maximal motor deficit of the median nerve below the elbow is 10 percent and therefore right upper extremity impairment is 10 percent times 10 percent = 1 percent PPI and left upper extremity is 10 percent times 10 percent = 1 percent PPI…."

Dr. McManus correctly applied the fourth edition of the A.M.A., *Guides* to his physical findings on examination of appellant in reaching his determination that appellant sustained a one percent permanent impairment of each upper extremity due to motor deficit. The Office medical adviser agreed with Dr. McManus' determination. There is no medical evidence of record establishing that appellant had more than a one percent permanent impairment of each upper extremity for which he received a schedule award.

The decision of the Office of Workers' Compensation Programs dated June 24, 1999 is affirmed.

Dated, Washington, DC
June 14, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member