

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REYNOLD T. SANTAMARIA and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Pittsburgh, PA

*Docket No. 99-2087; Submitted on the Record;
Issued May 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to receive a schedule award for an employment-related permanent impairment of his upper extremities.

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to receive a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ 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 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

On July 11, 1988 appellant, then a 35-year-old postal worker, sustained an employment-related cervical strain. The Office authorized a posterior cervical foraminectomy at C5-6 which

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).

was performed on March 24, 1992. Appellant last worked in July 1991 and has received disability compensation from the Office.⁶ In late 1997 he claimed entitlement to a schedule award related to his employment injury. By decision dated August 6, 1998, the Office denied appellant's claim on the grounds that the medical evidence did not show that he had a permanent impairment of his upper extremities due to his employment injury.⁷

In several form reports dated January 30, 1998, Dr. Joseph K. Eshleman, an attending physician Board-certified in physical medicine and rehabilitation, provided impairment ratings for appellant's upper extremities based on limited motion and sensory loss: 14 percent associated with the right shoulder; 16 percent associated with the right elbow; 6 percent associated with the right wrist; 14 percent associated with the left shoulder; and 15 percent associated with the left elbow. These reports are of limited probative value because they do not contain an opinion on causal relationship.⁸ Dr. Eshleman did not provide an opinion that appellant's upper extremity impairments were related to his July 11, 1988 employment injury, a cervical strain.⁹

Moreover, the record contains evidence which shows that appellant did not have any permanent impairment due to his July 11, 1988 employment injury. In a report dated June 9, 1998, an Office medical adviser concluded that appellant was not entitled to a schedule award due to his employment injury. He indicated that appellant's electromyogram (EMG) and nerve conduction velocity (NCV) studies¹⁰ were normal and that "this means any problem he has with his wrist, elbows and shoulders are local and are not due to cervical radiculopathy." The Office medical adviser also indicated that his opinion was supported by the fact that Dr. Robert P. Durning, a Board-certified orthopedic surgeon to whom the Office referred appellant, concluded that appellant did not have a cervical radiculopathy.¹¹

⁶ Appellant received compensation from the Veterans Administration for a service-connected right shoulder condition.

⁷ The Office later determined that there was a conflict in the medical evidence regarding whether appellant could perform a limited-duty position offered by the employing establishment. This matter is not currently before the Board on appeal.

⁸ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁹ As previously noted, appellant's right shoulder condition was not related to his employment injury.

¹⁰ In October 1997, Dr. Eshleman performed EMG and NCV studies of appellant's left upper extremity which yielded normal results. The findings of EMG and NCV studies performed in October 1988 on both upper extremities also showed normal results.

¹¹ In a report dated December 3, 1996, Dr. Durning stated that there was "no clinical evidence" of cervical radiculopathy.

The August 6, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 4, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member