

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES CHARLES DIPPOLITO and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Trenton, NJ

*Docket No. 00-1795; Submitted on the Record;
Issued October 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained greater than a 19 percent impairment to the right upper extremity, for which he already received a schedule award; and (2) whether appellant has established that he sustained an injury to his left upper extremity as a result of the accepted employment injury of November 29, 1989.

On December 1, 1989 appellant, then a 41-year-old building equipment maintenance mechanic, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he suffered from a burnt right arm and eye damage as a result of an incident on November 29, 1989 at his employment, the details of which he could not remember. A statement by the manager of the plant indicated that while appellant was working inside a motor control electrical panel for a chiller water circulation pump, there was a short circuit of the panel's main circuit breaker and this caused an explosion and fire in the panel. He noted that appellant sustained burns on his face, upper torso, hands and right eye and a gash on his right hand. By letter dated April 17, 1990, the Office of Workers' Compensation Programs accepted appellant's claim for a right hand burn and began compensation benefits. Appellant's claim was also accepted for burns to the right side of the face and chest.

On July 19, 1997 appellant filed a claim for a schedule award.

In support of his request for a schedule award, appellant submitted a medical report dated May 7, 1997 by Dr. Ronald John Potash, a Board-certified surgeon, who opined that the work-related injury was the cause of appellant's disability is his right and left upper extremities. Dr. Potash applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*,)¹ and awarded appellant 27 percent disability of his right upper extremity. He arrived at this conclusion by awarding 10 percent for ulnar neuropathy at the elbow, 10 percent for right median neuropathy at the wrist and 10 percent for right median nerve

¹ A.M.A., *Guides*, page 57, Table 16.

entrapment at the wrist. Using the combined total tables, Dr. Potash concluded that appellant suffered from a 27 percent impairment to the right upper extremity. He gave identical figures for his evaluation of appellant's impairment in his left upper extremity.

On October 28, 1997 the Office asked the Office medical adviser for comments and on November 3, 1997 he responded that the left arm was not involved in the work injury, so no schedule award could be calculated for the left arm. With regard to appellant's right arm, the Office medical adviser found that appellant had a 19 percent impairment based on the A.M.A., *Guides*.² The Office medical adviser found that Dr. Potash erred in using both a 10 percent figure for median nerve entrapment and a 10 percent figure for median neuropathy, as this was a duplication. Therefore, the Office medical adviser allowed 10 percent for the mild ulnar entrapment at the elbow and 10 percent for the median entrapment at the wrist. Utilizing the Combined Values Chart, he determined that appellant was, therefore, entitled to a 19 percent impairment of his right upper extremity.

On November 24, 1997 the Office issued a schedule award based on a 19 percent permanent loss of use of the right arm.

At appellant's request, a hearing was held on June 25, 1998. At the hearing, appellant testified that although he did not initially complain to physicians regarding his left arm, he knew that his left arm condition was related to his injury.

In his decision dated September 14, 1998, the hearing representative affirmed the Office's finding.

By letter dated October 16, 1998, appellant requested reconsideration. In support of his request, appellant submitted an October 12, 1998 report from Dr. Jay Patel, wherein he noted:

“[A]ppellant's findings while under my care and observations are consistent with an electrical injury affecting the muscles and nerves of both upper extremities. The finding of changes in the peripheral nerve conduction velocity, which change with time after injury and the findings involving progressively distal segments of the nerve suggest a demyelination type of injury affecting the longer fibers more than the shorter fibers, with partial recovery of the shorter fibers that cross the ulnar nerve at the elbow but no significant changes or worsening of conduction velocity of the distal median nerve and the ulnar nerve at the wrist.

“These types of injuries can present late after the initial accident because demyelination and remyelination is an uncertain process in electrical injuries.”

He concluded:

“I can state with reasonable medical certainty that the progressive neurological changes seen in both the right and left upper extremities are related to the

² *Id.*

electrical injury that the patient sustained at the time of his initial accident on [November 29, 1989].”

By decision dated January 26, 2000, the Office denied modification of the prior decision for the reason that the medical evidence did not demonstrate that appellant had a permanent impairment of the left arm causally related to his employment injury or that he sustained greater than a 19 percent impairment to his right upper extremity.

The Board finds that appellant did not establish that he had greater than a 19 percent impairment to the right upper extremity, for which he already received an award under the schedule.

The schedule award provision of the Federal Employees’ Compensation Act provides for compensation to employees sustaining impairment from loss or loss of use of, specified members of the body.³ The Act, however, does not specify the manner in which the percentage of 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. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be a uniform standard applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

In the instant case, Dr. Potash opined that appellant suffered from a 27 percent impairment to his right upper extremity. In arriving at this conclusion, he determined that appellant had a 10 percent loss for ulnar neuropathy at the elbow, 10 percent for right median neuropathy at the wrist and 10 percent for right median nerve entrapment at the wrist. Dr. Potash then used the combined total tables and determined that appellant had a 27 percent impairment to his right upper extremity.

However, the Office medical adviser noted that Dr. Potash erred in using separate figures for median nerve entrapment and median neuropathy, as they were the same nerve and this resulted in a duplication. The Office medical adviser proceeded to combine the values for 10 percent ulnar nerve entrapment at the elbow and 10 percent median nerve entrapment at the wrist and determined that appellant had a 19 percent right upper extremity impairment.

As Dr. Potash improperly added the two numbers regarding the median together, this was contrary to the A.M.A., *Guides* and his opinion is of diminished weight. Therefore, the Board finds that the opinion of the Office medical adviser properly evaluated the percent of impairment to appellant’s right upper extremity and the Office properly awarded appellant a schedule award based on a 19 percent impairment to the right upper extremity.

The Board finds that appellant met his burden of proof to establish that he sustained a left upper extremity condition in the performance of duty.

³ 5 U.S.C. § 8107.

⁴ *Danniel C. Goings*, 37 ECAB 781 (1986).

An employee seeking benefits under the Act⁵ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition, for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

In the case at hand, it is clear that appellant suffered an employment injury. The Board further finds that appellant has met his burden of proof to establish that he sustained a condition in his left upper extremity as a result of the accepted employment injury of November 29, 1989 through the medical report of Dr. Patel. He examined appellant on five different occasions from April 2, 1990 through January 3, 1991 and concluded, “I can state with reasonable medical certainty that the progressive neurological changes seen in both the right and left upper extremities are related to the electrical injury that the patient sustained at the time of his initial accident on [November 29, 1989].” Dr. Patel reasoned: “these types of injuries can present late after the initial accident because demyelination and remyelination is an uncertain process in electrical injuries.” Dr. Patel’s opinion constitutes a well-rationalized opinion that appellant sustained injuries to his left upper extremity as a result of his accepted employment-related accident. On remand, the Office shall consider whether appellant is entitled to a schedule award for the left upper extremity.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The January 26, 2000 decision of the Office of Workers' Compensation is reversed insofar as the Board finds that appellant has established that he suffered a compensable injury to his left arm. The decision awarding a 19 percent schedule impairment for the right upper extremity is affirmed.

Dated, Washington, DC
October 12, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member