

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANDRE BROWN and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Indianapolis, IN

*Docket No. 02-1834; Submitted on the Record;  
Issued December 16, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 15 percent permanent impairment of the right arm which had been previously awarded.

The case has been on appeal previously.<sup>1</sup> The Board noted that appellant filed a claim on January 25, 1997 for pain in both wrists and elbows. Appellant's claim was accepted for right lateral epicondylitis and right cubital tunnel syndrome. He underwent surgery on May 26, 1988 for decompression of the right cubital tunnel syndrome. In a March 2, 1998 decision, the Office of Workers' Compensation Programs issued a schedule award for a five percent permanent impairment of the right arm. In a July 16, 1999 decision, the Office issued a schedule award for an additional 10 percent permanent impairment of the right arm for a total permanent impairment of 15 percent. The Board found that appellant had no more than a 15 percent permanent impairment of the right arm.

On June 20, 2001 appellant underwent additional surgery for chronic and consistent dysesthesias along the ulnar nerve of the right arm. Dr. William Kleinman, a Board-certified orthopedic surgeon, noted that the surgery also reviewed a neuroma over the medial antebrachial cutaneous nerve and severe perineural fibrosis of the ulnar nerve at the epicondyle.<sup>2</sup> Dr. Kleinman performed a redo of the neurolysis of the ulnar nerve at the elbow with anterior intramuscular transposition, excision of the neuroma over the medial antebrachial cutaneous nerve, and implantation of the medial antebrachial cutaneous nerve in the medial border of the triceps muscle.

In an August 2, 2001 report, Dr. Ross J. Fox, an orthopedic surgeon, stated that appellant had hypersensitivity over the medial antebrachial cutaneous nerve distribution but had some

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<sup>1</sup> Docket No. 99-2346 (issued October 5, 2000).

<sup>2</sup> The operation originally was stated to be on the left arm. Appellant's physician subsequently corrected to the report, indicating that the surgery was on the right arm.

relief with regard to the ulnar nerve transposition. In a September 11, 2001 report, Dr. Kleinman stated that appellant had no permanent impairment due to the surgery. He indicated that appellant had full range of motion and normal sensibility of the hand and would return to full use of the hand without restriction. In a December 26, 2001 report, Dr. Kleinman stated that appellant had a 10 percent permanent impairment of the right arm due to the surgery. He stated that appellant should be able to use his right arm fully and would have no restriction in the use of his arm.

On January 19, 2002 appellant filed a claim for an increased schedule award of the right arm.

In a March 10, 2002 report, Dr. Kleinman stated that the 10 percent permanent impairment rating was based on a decrease in the objectively measurable strength and persistent compromised sensibility along appellant's ulnar nerve distribution.

In a March 25, 2002 memorandum, an Office medical adviser indicated that appellant had a five percent permanent impairment of the right arm due to hypersensitivity of the medial antebrachial distribution.

In an April 9, 2002 decision, the Office denied appellant's claim for an increased schedule award on the grounds that the medical evidence showed that he only had a 5 percent permanent impairment of the right arm, which was less than the 15 percent permanent impairment for which a schedule award had previously been issued.

The Board finds that appellant is not entitled to an increased schedule award.

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> 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, 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.<sup>5</sup>

Dr. Fox stated in his August 2, 2001 report that appellant had hypersensitivity over the medial antebrachial cutaneous nerve. Under the A.M.A., *Guides*, a permanent impairment of the sensory distribution of the medial antebrachial cutaneous nerve equals a five percent permanent impairment of the arm. Dr. Kleinman stated that appellant had a 10 percent permanent impairment of the arm due to loss of strength and persistent compromised sensibility over the ulnar nerve distribution. Dr. Kleinman did not provide any symptoms or test results to show

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> (5<sup>th</sup> ed. 2000).

appellant had decreased strength in the right arm. He also did not provide any findings to support his diagnosis of persistent compromised sensibility over the ulnar nerve distribution. His statement that appellant had a 10 percent permanent impairment of the right arm, in addition to the 5 percent permanent impairment of the arm due to impairment of the medial antebrachial cutaneous nerve, is not supported by any findings or rationale in support of his conclusion. Appellant, therefore, has not submitted sufficient probative medical evidence to show that he has more than a 15 percent permanent impairment of the right arm.

The decision of the Office of Workers' Compensation Programs, dated April 9, 2002, is hereby affirmed.

Dated, Washington, DC  
December 16, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member