U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESUS SANCHEZ and U.S. POSTAL SERVICE,
POST OFFICE, National City, CA

Docket No. 02-480; Submitted on the Record;
Issued July 18, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant has established that he has more than a 22 percent permanent impairment of the right arm, for which he has received a schedule award.

In the present case, the Office of Workers' Compensation Programs accepted that appellant developed right-hand tendinitis and a herniated or protruding cervical disc with surgery, in the performance of duty on February 10, 1994. By decision dated March 8, 1996, the Office issued a schedule award for a 22 percent permanent disability for loss of use of the right arm. Appellant was paid for the period September 19, 1994 through January 12, 1996.

On July 29, 1999 appellant filed a Form CA-7 claiming an additional schedule award due to the accepted employment injury. By decision dated November 19, 1999, the Office denied the claim on the grounds that appellant had no greater impairment than previously awarded by the Office on March 8, 1996.

On or about October 23, 2000 appellant underwent a cervical decompression and stabilization surgery. He returned to limited-duty work after December 1, 2000.

On April 23, 2001 appellant filed another CA-7 form claiming an additional schedule award attributed to the previous employment injury. By decision dated August 13, 2001, the Office determined that appellant had not established that he was entitled to an additional schedule award.

The Board has reviewed the record and finds that appellant has not established that he has any additional permanent impairment greater than the 22 percent permanent impairment to the right arm previously awarded.

The schedule award provisions of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.[4]

In an April 27, 2001 report, an Office medical adviser noted that appellant's medical records had been reviewed to determine if he had any additional impairment of the left or right upper extremity due to the accepted employment injury. He indicated that appellant previously received a schedule award for 22 percent impairment of the right upper extremity or arm, based on the value for loss of shoulder range of motion of 14 percent, a value of 6 percent for pain, combined with a value of 4 percent for upper extremity weakness. The Office medical adviser indicated that, following the 1996 schedule award, appellant underwent anterior cervical discectomy and osteophyte removal at C4-5 and C5-6 and anterior cervical fusion was attempted at both levels with spinal fixation. He noted that reports indicate some improvement following surgery.

The Office medical adviser then reviewed an April 11, 2001 report from Dr. Larry Dodge, a Board-certified orthopedic surgeon who indicated that appellant had been working in a restricted capacity following the employment injury and that after surgery, he had reached a plateau in his recovery. The Office medical adviser reported Dr. Dodge's finding that, under the A.M.A., *Guides*, Fourth Edition, page 113, Table 75, appellant had a surgically treated disc lesion with some residual symptoms, which corresponded to a 9 percent impairment of the whole person. Dr. Dodge found that because appellant had an additional level involved, there was an additional one percent impairment for a total of 10 percent impairment.

The Office medical adviser then analyzed the April 11, 2001 report findings using the Fifth Edition of the A.M.A., *Guides*. The Office medical adviser stated:

> "This report indicates occasional pain and tightness in the right side of the neck and shoulder. This report describes good range of motion of the neck with some mild pain. Subjective complaints are described as somewhat between slight-moderate present with heavy lifting, present with prolonged head and neck flexion and extension. These pain complaints would be graded between a Grade II and Grade III as per Table 15-15, Page 424. This would be between a maximal 60

[1] 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.404.

[3] (5th ed. 2001).

[4] *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

and 80 percent, and this reviewer would recommend a mean of this, or 70 percent of a maximal 5 percent for C5 and 8 percent for C6 (Table 15-17, Page 424). This would calculate out to a 70 percent of a maximal 13 percent, or a 9 percent impairment for the pain factors described. The current records indicate no loss of any range of motion of the major joints of the upper extremities, for a 0 percent impairment. The records do not describe any atrophy or weakness. The review of these additional medical records would indicate no impairment of the left upper extremity or arm or a 0 percent. The impairment of the right upper extremity would be no higher than 9 percent which is much lower than the previously calculated award. Date of maximum medical improvement following the surgical procedure would be April 11, 2001, some six months following the procedure. This reviewer would comment that this individual seems to manifest improvement following successful surgery."

The Office medical adviser properly applied the A.M.A., *Guides* to Dr. Dodge's findings and determined that appellant had no more than a nine percent impairment of the right upper extremity, which he noted was much lower than the previously calculated award. The Board notes that, although Dr. Dodge determined that appellant had no more than a 10 percent impairment, he utilized the previous edition of the A.M.A., *Guides*. When the treating physician does not properly use the A.M.A., *Guides* in determining permanent impairment, it is appropriate for the Office medical adviser to apply the A.M.A., *Guides* to the findings presented by the treating physician. As the Office medical adviser's report is the only evaluation that conforms to the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[5]

The medical evidence in this case fails to support that appellant has any additional impairment to any extremity, resulting from the February 10, 1994 employment injury. Therefore, appellant is not entitled to receive an additional schedule award.[6]

[5] *Lena P. Huntley*, 46 ECAB 643 (1995).

[6] With appellant's request for an appeal, appellant submitted additional medical evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having the Office consider this evidence as part of a reconsideration request.

The decision of the Office of Workers' Compensation Programs dated August 13, 2001 is hereby affirmed.

Dated, Washington, DC
July 18, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member