U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES ROBINSON, JR., and DEPARTMENT OF THE NAVY, NAVAL SUPPLY STATION, Oakland, CA

Docket No. 00-2708; Submitted on the Record;
Issued March 6, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has greater than a 10 percent permanent impairment of his right upper extremity causally related to his January 11, 1980 employment injury or authorized surgery.

On January 11, 1980 appellant, then a 32-year-old warehouseman, was driving a truck and changing gears when the stick shift jumped out of gear and struck him on the palm of his right hand and thumb. The Office of Workers' Compensation Programs accepted his claim for right carpal tunnel syndrome and authorized a surgical release on May 27, 1980. On November 26, 1982 the Office issued a schedule award for a 10 percent permanent impairment of the right upper extremity resulting from the employment injury of January 11, 1980. On March 4, 1987 the Office terminated appellant's compensation effective March 15, 1987 on the grounds that the medical evidence failed to establish that he had any continuing disability causally related to the work injury of January 11, 1980.

On March 27, 1998 the Office noted that appellant's congressional district representative had advised that appellant wished to file for an additional schedule award for impairment to his right hand. The Office attached a schedule award claim form and forms for his doctor to complete.

In a statement dated April 8, 1998, appellant noted that he was sending in the claim form for the schedule award.[1] On April 12, 1998 he completed the form and indicated that he was seeking a schedule award.

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[1] Appellant contended that the physician who performed the surgical release on May 27, 1980 botched the surgery, scarred the motor branch of the median nerve, caused irreversible nerve damage in his thumb, hid the facts of what he did and subsequently lied about it. These charges may be the result of a simple misunderstanding of medical terminology and of the procedure performed on May 27, 1980, wherein the surgeon explored the motor branch of the median nerve, found the branch bound in a piece of fascia or scar tissue at some point along its course and removed this scar tissue to release the nerve.

In a decision dated April 21, 1998, the Office denied appellant's claim for an additional schedule award. The Office found that appellant had submitted no medical evidence to establish any additional impairment resulting from the accepted employment injury.

In a letter dated April 22, 1998, appellant indicated that he was resubmitting evidence because he believed that he had a greater than 10 percent loss of use of his right hand. He submitted, among other things, evidence that the Department of Veterans Affairs had determined that he was 50 percent nonservice-connected disabled for severe right hand dysesthesia.

On May 1, 1998 the Office advised appellant that the materials he submitted were duplicative of information previously of record and that there was no basis for an additional award. The Office advised appellant to review the rights attached to the April 21, 1998 decision and to exercise the course he believed to be appropriate.

Appellant submitted a September 23, 1999 treatment note from Dr. Nirmala N. Nayak, who related appellant's complaints and brief medical history. She related her findings on physical examination. Dr. Nayak reported that an April 1997 x-ray showed mild degenerative joint disease of the right first metacarpophalangeal joint. She reported the following impression: "Does not display full signs of causalgia since there should have been atrophic skin changes if the condition was present since 1980. Signs of acute inflamm[ation] probably from tendinitis (intermittent) which may explain lack of swelling on my exam[ination] in October 1998. However veteran is determined to pursue [diagnosis] of causalgia." Dr. Nayak further reported: "O.T. consult to complete hand [range of motion] evaluation."

Appellant submitted an unsigned impairment rating form showing active ranges of motion and other findings, such as grip strength and pinch strength.

On December 20, 1999 appellant indicated that he was submitting these medical reports for the purpose of applying for a schedule award for loss of use of his right hand or arm: "I have severe dysesthesia with a 50 percent residuals."

The Office referred the case to an Office medical consultant for review. In a January 17, 2000 report, the Office medical consultant concluded that he could find no evidence to calculate an award higher than the 10 percent previously calculated.

Appellant submitted additional evidence, including a February 21, 1995 note indicating that his diagnosis changed from carpal tunnel syndrome to right hand pinched motor branch, right median nerve.

In a decision dated August 10, 2000, the Office denied appellant's claim for an amended or additional schedule award.

The Board finds that appellant has not met his burden of proof to establish that he has greater than a 10 percent permanent impairment of his right upper extremity causally related to his January 11, 1980 employment injury or authorized surgery.

A claimant seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[3] Appellant thus bears the burden of proof to establish that he has greater than a 10 percent permanent impairment of his right upper extremity causally related to his January 11, 1980 employment injury or authorized surgery.

The schedule award provision of the Act[4] and its implementing regulation[5] 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.

To support his claim for an additional schedule award, appellant has submitted no impairment rating from a qualified physician showing that he has greater than a 10 percent permanent impairment of the right upper extremity according to the protocols of the A.M.A., *Guides* as a result of his January 11, 1980 employment injury or authorized surgery. Dr. Nayak provided no impairment rating and indicated that an occupational therapist would complete the range of motion form. The reports of therapists have no probative value on medical questions because a therapist is not a physician as defined by 5 U.S.C. § 8101(2) and, therefore, is not competent to render a medical opinion.[6] Because Dr. Nayak did not sign off on the range of motion form, the findings listed are of no evidentiary value to establish permanent impairment under the A.M.A., *Guides*. Moreover, Dr. Nayak had provided no medical reasoning to establish that any current impairment was causally related to appellant's January 11, 1980 employment injury or authorized surgery.

The issue raised by the disability rating of the Department of Veterans Affairs has been raised in other cases and has been addressed by the Board. In the case of *Hazelee K. Anderson*, 37 ECAB 277 (1986), the Office rejected the employee's claim on the grounds that the medical evidence of record failed to establish that she was disabled after March 13, 1979 as a result of her November 14, 1978 employment injury. The employee requested reconsideration and provided a copy of a September 24, 1984 decision awarding her social security benefits. The

[2] 5 U.S.C. §§ 8101-8193.

[3] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *See Barbara J. Williams*, 40 ECAB 649, 657 (1988) (physical therapist); *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979) (physician's assistant); 5 U.S.C. § 8101(2) (the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).

Office found that the evidence was insufficient to warrant modification of its prior decision. On appeal, the Board stated:

> "Appellant submitted a copy of a decision of the Social Security Administration which awarded her benefits. In this regard, it appears that appellant is under the impression that because she was awarded disability benefits for retirement purposes she is *ipso facto* disabled for compensation purposes under the Act. This is not so and, as the Board has stated, entitlement to benefits under one Act does not establish entitlement to [benefits under] the other. The findings of other administrative agencies have no bearing on proceedings under the Act which is administered by the Office and the Board, and a determination made for disability retirement purposes is not determinative of the extent of physical impairment or loss of wage-earning capacity for compensation purposes. The two relevant statutes (Social Security Act and the FECA) have different standards of medical proof on the question of disability; disability under one statute does not prove disability under the other. Furthermore, under the FECA, for a disability determination, appellant's conditions must be shown to be causally related to her federal employment. Under the Social Security Act, conditions which are not employment related may be taken into consideration in rendering a disability determination."[7]

Similarly, in this case, appellant's nonservice-connected disability rating by the Department of Veterans Affairs is not determinative of his entitlement to an additional schedule award or other benefits under the Act.

The weight of the medical evidence fails to establish that appellant has greater than a 10 percent permanent impairment of his right upper extremity causally related to his January 11, 1980 employment injury or authorized surgery. Appellant has not met his burden of proof.

[7] 37 ECAB 277, 282-83 (1986) (citations omitted).

The August 10, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 6, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member