

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM W. BOWMER and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Jacksonville, FL

*Docket No. 01-1898; Submitted on the Record;
Issued May 29, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's accepted employment injury has caused permanent impairment to his left upper extremity.

On September 23, 1974 appellant, then a 31-year-old sheet metal worker, injured his back and right shoulder when he slipped and fell at work. The Office of Workers' Compensation Programs accepted his claim for contusion of the coccyx, tenosynovitis of the right shoulder, brachial plexus traction injury of the right shoulder and aggravation of spinal stenosis at C3-4. On August 24, 1995 the Office issued a schedule award for a 20 percent permanent impairment of the right upper extremity.

On May 14, 1998 appellant advised the Office that his attending orthopedic surgeon, Dr. Samy F. Bishai, informed him that his cervical spine injury was causing the swelling, pain and numbness in his left shoulder, arm and hand. Appellant indicated that he was seeking a schedule award for this condition.

On April 22, 1999 the Office advised appellant to submit a rationalized opinion from Dr. Bishai explaining whether residuals from the September 23, 1974 employment injury continued and how those residuals had caused permanent impairment to appellant's left upper extremity. The Office stated:

"We have awarded you a schedule award for permanent impairment to the right upper extremity, the relationship to your injury being clear. But it is much different for your left upper extremity. For that to be considered consequential to your injury, the aggravation of spinal stenosis, which would presumably be temporary, would have to be proven medically to be permanent and the cause of any permanent impairment of that left arm."

On June 26, 2000 the Office notified appellant that the medical record contained no medical rationale from Dr. Bishai explaining that the accepted cervical condition had caused

permanent impairment to an upper extremity. Medical evidence dating back to November 16, 1998 from Dr. Bishai indicated that neurological examination of the upper limbs showed no evidence of neurological deficit. The Office requested that appellant submit within 30 days the medical opinion evidence necessary to substantiate his claim.

Dr. Bishai evaluated the impairment of appellant's left upper extremity based on range of motion but offered no opinion on how this was causally related to the incident at work on September 23, 1974. Dr. Bishai referred appellant to Dr. Bruce Hartwig, a neurological consultant. On October 12, 2000 Dr. Hartwig reported that appellant's neck pain was most likely on the basis of multilevel degenerative disc disease and perhaps secondary nerve irritation. He stated that he had no evidence that this was in any way related to the accident of September 23, 1974 "rather than just normal aging process."

In a decision dated April 27, 2001, the Office denied a schedule award for the left upper extremity.

The Board finds that appellant has not met his burden of proof to establish that his accepted employment injury has caused permanent impairment to his left upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing federal regulation² provide for payment of compensation for the permanent loss or loss of use of specified members, functions and organs of the body. No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.³ Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back,⁴ no claimant is entitled to such an award.⁵

Amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁶

The medical evidence in this case, however, does not support that the aggravation of appellant's spinal stenosis at C3-4 from a slip and fall in 1974 caused a permanent impairment to

¹ 5 U.S.C. § 8107(a).

² 20 C.F.R. § 10.404 (1999).

³ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies equally to body members that are not enumerated in the schedule provision as it read before the 1974 amendment, and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment).

⁴ The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

⁵ *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

⁶ *Rozella L. Skinner*, 37 ECAB 398 (1986).

appellant's left upper extremity. The Office advised appellant of what medical opinion evidence was needed from his attending orthopedic surgeon, Dr. Bishai, to support his claim for a schedule award. Dr. Bishai had to explain whether appellant continued to suffer residuals of his 1974 injury, and if so, how these residuals caused permanent impairment to the left upper extremity. Appellant submitted no such medical opinion. In fact, Dr. Bishai's consulting neurologist, Dr. Hartwig, reported that he had no evidence that appellant's neck condition was in any way related to the accident of September 23, 1974, as opposed to just the normal aging process.

Without a well-reasoned medical opinion explaining how appellant's employment injury in 1974 has caused permanent impairment to his left upper extremity, the evidence of record is insufficient to support appellant's claim for a schedule award.

The April 27, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 29, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member