

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NATHAN D. JOHNSON and U.S. POSTAL SERVICE,
MAIL EQUIPMENT SHOPS, Washington, DC

*Docket No. 03-304; Submitted on the Record;
Issued April 21, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS,

The issue is whether appellant has greater than a four percent permanent loss of use of his left arm.

On February 16, 1999 appellant, then a 35-year-old machine operator, filed a claim for a traumatic injury to his upper back and neck sustained on January 22, 1999 while operating a grommet machine.

The Office of Workers' Compensation Programs initially accepted that appellant sustained a cervical spine strain and later also accepted that the anterior cervical discectomy at C6-7 with interbody fusion performed on May 6, 1999 by Dr. Najmaldin O. Karim, a Board-certified neurosurgeon, was related to the January 22, 1999 employment injury. The Office also accepted that appellant sustained an "aggravation/exacerbation of cervical disc" on January 11, 2001 by lifting the freight elevator door at work.

On August 2, 2001 appellant filed a claim for a schedule award.

On November 21, 2001 an Office medical adviser reviewed an April 19, 2000 report from Dr. Karim, which indicated that appellant had a 35 percent permanent impairment of his left arm due to loss of function from sensory deficit, pain or discomfort originating from the C6-7 nerve roots. The Office medical adviser stated that appellant's C7 nerve root was affected, that the maximum percentage allowed for sensory loss of this nerve root was 5, that appellant had a Grade 2 impairment allowing up to 80 percent of the maximum and that multiplication of these values resulted in a 4 percent permanent impairment of the left arm, according to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

On November 30, 2001 the Office issued appellant a schedule award for a four percent permanent loss of use of his left arm.

By letter dated February 10, 2002, appellant requested reconsideration, contending that he had sustained another accepted injury after Dr. Karim's April 2000 evaluation and that the incorrect edition of the A.M.A., *Guides* had been used.

On July 5, 2002 the Office referred appellant to Dr. Robert Draper, a Board-certified orthopedic surgeon, for an evaluation of the permanent impairment of his upper extremities related to his accepted conditions of herniated disc at C6-7 and cervical fusion.

In a report dated July 22, 2002, Dr. Draper set forth appellant's history, noted that appellant complained of pain in the neck and left arm and of "some paresthesias involving the left ring and middle fingers." Examination revealed cervical spine muscle spasm and tenderness, +5 motor function for all upper extremity muscles tested, and normal light touch sensation for the C2 to T1 dermatomes. Dr. Draper provided measurements in degrees of the ranges of motion of each joint of the left upper extremity, from the shoulder to the fingers. He then concluded:

"This patient was examined carefully. Although he has some paresthesias in the upper extremities involving the left fourth and fifth fingers, he does not have neurologic deficit. There is no motor or sensory deficit in the left upper extremity. Consequently, no impairment of the left upper extremity can be given due to the neck pathology.

"The A.M.A., *Guides*, [f]ifth [e]dition, does give consideration for rating pathology for injuries to the cervical spine and for fusion of the cervical spine. However the Division of Federal Employees' Compensation [Act] policies do not allow for such a rating. Using the Department of Labor Guidelines, I am restricted to giving impairment for extremity effects from the cervical spine injury. Since there are no significant extremity effects for the cervical spine injury, it is difficult for me to give an impairment rating. Using the Guidelines of the Department of Labor, no impairment can be authorized for the spinal injury since no significant impairment of the member (left upper extremity) is defined by this examiner. Specifically, I am not able to define specific sensory or motor deficits in the left upper extremity and therefore I cannot give an impairment rating of the left upper extremity. This is according to the Guidelines of the Department of Labor which I am given to use.

"The date of maximum medical improvement was January 1, 2002.

"The specific nerve root branches affected would be C7 or C8 on the left, however, the patient has no motor or sensory deficit. He just has paresthesias. There is no permanent impairment of the left upper extremity due to loss of function or sensory deficit of the left upper extremity which is why no impairment is determined to be present in the left upper extremity."

By decision dated August 16, 2002, the Office found that appellant had no additional loss of use of the left arm.

The Board finds that appellant has no greater than a four percent permanent loss of use of the left arm.

The schedule award provisions of the Act¹ and its implementing regulation² 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. A schedule award is not payable for the loss, or loss of use, of a part of the body not specifically enumerated in the Act.³ There is no provision in the Act or its regulation on schedule awards⁴ for payment of a schedule award for impairment to the back or to the body as a whole.⁵ Furthermore, the back is specifically excluded from the definition of “organ” under the Act.⁶ A schedule award may be paid for an employment-related permanent impairment of an arm, a scheduled member under the Act, if the cause of the impairment originated in the spine.⁷

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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In his July 22, 2002 report, Dr. Draper provided a detailed explanation for his conclusion that appellant had no permanent impairment of his left arm related to his cervical spine condition. Comparison of the ranges of motion of appellant’s left arm found by Dr. Draper to the tables of Chapter 16 of the fifth edition of the A.M.A., *Guides* shows no impairment for range of motion. Dr. Draper found no motor or sensory deficit on examination. This finding is consistent with the normal findings on a March 6, 2001 electromyogram and nerve conduction study. It is also consistent with the most recent report from Dr. Karim, a November 4, 2002 report stating: “He has no weakness. He has normal sensation and reflexes.”

In an earlier report, dated June 13, 2001, Dr. Karim stated that appellant had a 25 percent impairment of the whole body, a 50 percent impairment of the cervical spine, a 35 percent impairment of the left upper extremity and a 12 percent impairment of the left shoulder. He stated that these percentages were based on the fourth edition of the A.M.A., *Guides*, but offered no explanation on how the percentages were arrived at or what impairments were considered. For this reason, Dr. Karim’s report is of little value in assessing any permanent impairment of appellant’s left arm related to his accepted condition of the cervical spine. As noted above, appellant cannot receive a schedule award for an impairment of the whole person or of the cervical spine.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *James E. Jenkins*, 39 ECAB 860 (1988).

⁴ 20 C.F.R. § 10.404.

⁵ *See Rozella L. Skinner*, 37 ECAB 398 (1986).

⁶ 5 U.S.C. § 8101(20).

⁷ *Edward G. Dustman*, 32 ECAB 1332 (1981).

As the only medical report describing specific measurable impairments of appellant's left arm that can be correlated with the tables of the A.M.A., *Guides*, Dr. Draper's July 5, 2002 report constitutes the weight of the medical evidence on the issue of whether appellant has a permanent impairment of the left arm related to his employment injuries. There is no probative medical evidence that appellant has greater than a four percent permanent impairment of the left arm.

The August 16, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 21, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member