

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of PAUL KING and U.S. POSTAL SERVICE,  
POST OFFICE, Grundy, VA

*Docket No. 02-2189; Submitted on the Record;  
Issued January 17, 2003*

---

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to a schedule award.

This is the second time this case has been before the Board. Appellant, a 60-year-old rural mail carrier, was injured on February 6, 1995 when the motor vehicle in which he was sitting was struck from behind by another motor vehicle. He filed a claim for compensation benefits, which was accepted for a cervical strain, right ankle strain, contusion of the right arm and left arm pyarthrosis.

By decisions dated August 4, 1999 and June 15, 2000, the Office denied appellant's claim for a schedule award. In a decision issued October 22, 2001,<sup>1</sup> the Board set aside the Office decisions, finding that the reports of the physicians of record were of diminished probative value because they relied on a statement of accepted facts which were not accurate or complete. The Board found that the statement of accepted facts failed to indicate that appellant's left elbow pyarthrosis condition was accepted by the Office as a consequential injury.<sup>2</sup> This was relevant to a determination of whether appellant had any permanent impairment because physicians of record noted a left elbow impairment but, found that his left arm condition was not work related. The Board remanded the case for the Office to further develop the issue of whether appellant was entitled a schedule award.

---

<sup>1</sup> Docket No. 00-2206 (issued October 22, 2001).

<sup>2</sup> The Board noted that the acceptance of the left arm condition was based on a January 16, 1996 report from Dr. William E. Kennedy, an orthopedic surgeon, who advised that a cervical epidural steroid injection on June 16, 1995 for the employment injury resulted in pyarthrosis of the elbow beginning a few days later.

The Office referred the case to Dr. Paul C. Liebrecht, a Board-certified orthopedic surgeon, who indicated, in a March 7, 2002 report, that appellant had a measurable permanent impairment in his left elbow. However, Dr. Liebrecht further stated:

“[I]t is my strong opinion that it cannot be said with a reasonable degree of medical certainty that the infection in [appellant’s] left elbow was related to the epidural steroid injection in his neck. I do [not] think there is any causal relationship.... As such, I do [not] think his left elbow problems are related to his industrial car accident.... If it is indeed a statement of accepted facts that the elbow is related to the accident because of some previous settlement or determination, then I think that is contributing to [appellant’s] disability, because his elbow is ankylosed....”

By decision dated May 14, 2002, the Office found that appellant was not entitled to a schedule award.

The Board finds that the case is not in posture for decision.

In the present case, Dr. Liebrecht’s report is of diminished probative value, as his opinion disregarded a critical element of the statement of accepted facts and is, therefore, flawed. In the prior appeal, the Board instructed the Office to include an accepted left elbow condition in the statement of accepted facts, as part of any determination of whether appellant was entitled to a schedule award based on the 1995 employment injury. However, Dr. Liebrecht, in his March 7, 2002 report, questioned the statement of accepted facts, in which the Office accepted a condition of left elbow pyarthrosis.<sup>3</sup> The Office denied the schedule award prior to clarifying Dr. Liebrecht’s medical opinion.

The Board will set aside the Office’s March 14, 2002 decision denying a schedule award, as Dr. Liebrecht’s medical report constitutes insufficient medical evidence upon which to base the decision. On remand, the Office should refer appellant to a new medical specialist to determine whether appellant sustained a permanent impairment causally related to his February 1995 employment injury. After such development as it deems necessary, the Office shall issue a *de novo* decision.

---

<sup>3</sup> See *Barbara Bush*, 38 ECAB 710, 714 (1987) (it is the function of the medical expert to give an opinion only on medical questions, not to find facts).

The Office of Workers' Compensation Programs' decision of May 14, 2002 is, therefore, set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC  
January 17, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member