

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH W. RAY and DEPARTMENT OF LABOR,  
MINE SAFETY & HEALTH ADMINISTRATION, Norton, VA

*Docket No. 02-1342; Submitted on the Record;  
Issued June 4, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to a schedule award for a left upper extremity impairment.

On January 16, 1996 appellant, a 48-year-old coal mine inspector, filed a notice of traumatic injury alleging that on January 11, 1996 he slipped on snow and ice in the employee parking lot and sustained injuries to his head, ear and neck. The Office of Workers' Compensation Programs accepted the claim for the conditions of cervical/thoracic strain, cerebral concussion and hearing loss in the left ear. In a decision dated May 16, 2000, the Office awarded appellant a schedule award for a 28 percent left hearing loss as a result of the accepted injuries.

In a letter dated May 7, 2000, appellant advised that, in addition to his left hearing loss, he sustained permanent impairment to his neck, middle back, left thumb and first and second fingers of the left hand.

In a report dated April 23, 1999, Dr. Michael Clary, an osteopath, reported that, after the January 11, 1996 fall, appellant developed chronic cervical sprain with radiculopathy to the arms, traumatic benign positional vertigo with dizziness with thoracic sprain, left focal ulnar neuropathy, degenerative joint disease of the neck with radiculopathy to the arms with numbness and pain intermittently, especially in the left arm. Dr. Clary noted that appellant has had persistent neck pains on and off since his fall, with occasional radicular pain down his arms and occasional dizziness. He advised that appellant had undergone osteopathic manipulation in the past for his neck, which has helped. A January 12, 1996 magnetic resonance imaging (MRI) scan of the cervical spine showed some degenerative changes. An electromyogram (EMG) showed ulnar neuropathy, left arm. Dr. Clary opined that appellant's problems started after the fall and that he has developed chronic neck pain, hearing loss on the left, ulnar neuropathy of the left arm secondary to a pinched nerve in the left arm at the elbow and intermittent dizziness as a result of the fall.

The Office referred appellant's case to its Office medical adviser, who reviewed appellant's file. In a report dated July 8, 2000, the Office medical adviser noted that appellant had sustained the accepted conditions on January 11, 1996 and Dr. Clary first reported that appellant had left greater than right radicular pain in 1998. The Office medical adviser opined that appellant does not have cervically mediated radicular pain. He noted that the Dr. M.R. Patel performed an EMG-nerve conduction study on March 11, 1998 and failed to find a cervical radiculopathy. He noted that, although Dr. Patel found findings suggestive of "a mild left cubital tunnel syndrome," he specifically indicated that the study showed no findings of a "left carpal tunnel syndrome or left cervical radiculopathy." The Office medical adviser stated that a cubital tunnel syndrome is not caused or mediated by an accepted condition of cervical strain. He further noted that, when appellant was hospitalized from January 11 through 15, 1996, Dr. Clary, in his discharge summary, indicated that cervical MRI scan showed a "mild kyphosis at the C4-5 level." He reported that Dr. Clary indicated that such a finding could be due to "diffuse muscle spasm or a interligamentous strain." The MRI scan of the cervical spine was not reported by Dr. Clary to show discal pathology. The Office medical adviser opined that the Office had no basis to pursue consideration of a schedule award due to a radicular pain complaint associated with the accepted condition of a cervical strain. Moreover, if appellant has a left cubital tunnel syndrome, the Office medical adviser opined that it could not be construed to be related to the conditions accepted at the time of the injuries in federal employment on January 11, 1996. The Office medical adviser concluded that there was no medical basis to consider a schedule award for residuals of the injuries on January 11, 1996 due to a neck or thoracic strain.

In a decision dated August 11, 2000, the Office denied appellant's claim for a schedule award due to cervical and thoracic sprain on the grounds that the medical evidence of record failed to establish a permanent impairment to the upper extremities causally related to the employment injury.

Appellant disagreed with that decision and requested an oral hearing, which he later changed to a review of the written record.

In a September 21, 2000 report, Dr. Clary reiterated the history of injury and the results of the objective tests appellant underwent. He further reiterated that appellant's problems started after his fall in 1996 and opined that all of his problems were related to the injury of January 11, 1996. Dr. Clary advised that appellant did not have any problems prior to his fall. He also recommended that appellant have a follow-up cervical spine x-ray to evaluate for possible arthritis since his accident.

In a March 22, 2001 decision, an Office hearing representative affirmed the Office's August 11, 2000 decision, finding that there was no evidence sufficient to support that appellant was entitled to a schedule award for permanent impairment to the left upper extremity as a result of his work injury of January 11, 1996.

In a letter dated February 15, 2002, appellant requested reconsideration. Additional evidence was submitted. An October 8, 2001 whole body bone scan showed slight activity at the left wrist. This was noted to be a nonspecific finding since it was a relatively common location for osteoarthritis or trauma. A cervical and thoracic x-ray dated December 28, 2001 revealed no significant bony or disc space abnormalities. A January 4, 2002 EMG report showed no

evidence of a left cervical radiculopathy or evidence of left carpal tunnel syndrome. January 16, 2002 cervical and thoracic MRI scans revealed no nerve encroachment at any level.

In a February 13, 2002 report, Dr. Clary summarized the findings from the recent diagnostic testings and noted a cervical radiculopathy and medial nerve paresthesia. He reiterated that appellant had no prior history of similar symptoms prior to his work injury of January 11, 1996. He opined that appellant's injuries were related to his fall because he had no prior history of similar symptoms and tests supported this data.

By decision dated April 3, 2002, the Office denied modification of its prior decision.

The Board finds that appellant has no permanent impairment of the left upper extremity causally related to the January 11, 1996 work injury that would entitle him to a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing federal regulation,<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>3</sup> 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* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup>

Initially, the Board notes that, although appellant had accepted cervical and thoracic conditions from the work injury, he is not entitled to a schedule award for those conditions. A schedule award is not payable for the loss or loss of use, of a part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under the Act.<sup>5</sup> Accordingly, no award is payable to appellant for the accepted cervical and thoracic conditions.

The Board notes that before application of the A.M.A, *Guides*; the Office must determine appellant's entitlement to a schedule award by finding that the impairment of the scheduled member is causally related to the alleged work injury. In this case, appellant seeks a schedule award for a left upper extremity impairment, but he has submitted no rationalized medical

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); see 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *George E. Williams*, 44 ECAB 530 (1993); *James E. Mills*, 43 ECAB 215 (1991).

opinion evidence to support a causal relationship between his left upper extremity condition and his January 11, 1996 employment injury.

Causal relationship is a medical issue,<sup>6</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

The Board notes that, while Dr. Clary has opined that appellant has a left cervical radiculopathy and medial nerve paresthesia, the objective testing fails to support either of these diagnoses. Although the objective testing supports a diagnosis of cubital tunnel syndrome, Dr. Clary has failed to provide sufficient medical rationalization as to how and why he believes that these conditions are causally related to the work injury of January 11, 1996. The Office medical adviser opined that cubital tunnel syndrome was not normally associated with a cervical sprain and the MRI scan from appellant's 1996 hospitalization failed to show cervical disc pathology. Moreover, although Dr. Clary opined that appellant's conditions are causally related to the work injury of January 11, 1996 because he was asymptomatic before the injury and symptomatic after the injury, the Board has held that a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before an injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relation.<sup>9</sup> The Board finds that the reports from Dr. Clary are unrationalized and, thus, are accorded diminished probative value.

As appellant has not submitted rationalized medical evidence establishing his left upper extremity impairment is causally related to his work injury, he is, therefore, not entitled to a schedule award for that condition.

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<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>7</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>9</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

Accordingly, the April 3, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
June 4, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member