

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOMAS MARTINEZ and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, TX

*Docket No. 03-396; Submitted on the Record;
Issued June 16, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's October 18, 2000 employment injury caused a permanent impairment to a scheduled member, entitling him to a schedule award.

On November 11, 2000 appellant, then a 47-year-old registered nurse, filed a traumatic injury claim alleging that he sustained an injury in the performance of his duties on October 18, 2000. He described the nature of his injury as "upper back, middle part of chest." He stated, as follows:

"On this date I was drawing blood and I had to place a tourniquet on a patient. As I was reaching forward, I turned my upper back to the right side to place the tourniquet in the patient's left hand. At that time and because of the awkward position of me turning I felt a sharp pain in my upper back radiating to my chest. The pain was very severe but I continued to work."

Appellant's orthopedist, Dr. M. Lewis Frazier, reported the following history of injury on November 27, 2000:

"This 47-year-old gentleman, with a history of lumbar stenosis, reports he rotated to his right five weeks ago while drawing blood and developed a sharp pain in his right chest, intrascapular area, with no associated visceral symptoms, shortness of breath, diaphoresis, palpitations, nausea, vomiting, etc., and also developed neck and left arm pain and paresthesias. His history is complicated with a history of carpal tunnel syndrome, left greater than right in the past, to a mild degree not felt necessitating surgical treatment. He rates his pain as 7/10 and moderately severe, with associated intermittent numbness in the left arm and hand in all digits."

X-rays of the cervical spine showed C5-6 degenerative disc disease. Thoracic plain films were read as negative but were not available for Dr. Frazier's review. A magnetic resonance imaging (MRI) scan of the cervical spine was read to show multilevel degenerative disc disease,

multilevel spinal stenosis and some cord flattening. “He is noted to have a 7 mm [millimeter] canal at C5-6, C4-5 left-sided bulge, C5-6 left greater than right foraminal narrowing and a moderate-sized bulge, C6-7 posterior bulging, and C7-T1 right-sided protrusion.” Dr. Frazier diagnosed severe cervical stenosis, left cervical radiculopathy; history of bilateral carpal tunnel syndrome in 1994; chronic low back pain, lumbar spinal stenosis; and chest pain, apparently noncardiac by history, with associated thoracic pain.

The Office of Workers’ Compensation Programs accepted appellant’s claim for spinal stenosis and thoracic strain. Appellant received compensation for temporary total disability on the periodic rolls.

On April 1, 2002 the Office adjusted appellant’s compensation for wage loss to reflect the wages he was earning as a modified staff nurse.¹

On August 29, 2002 appellant filed a claim for a schedule award. To support this claim, he submitted a July 29, 2002 rating from Dr. Frazier who identified the compensable body part as cervical and thoracic spine and left shoulder. He described the mechanism of injury as follows: “While the patient was drawing blood, he rotated his [trunk] right ward with onset of right-sided [chest] and intrascapular pain, posterior cervical, left arm pain and paresthesias.” Dr. Frazier noted that an MRI of the left shoulder showed a Type II acromion, with a probable partial acromial surface musculotendinous junction tear supraspinatus, as well as a possible slap lesion. This caused significant pain at times. Appellant’s current complaints were left greater than right posterior cervical pain radiating into the thoracic spine, occasional right parasternal pain, left shoulder pain intermittently, with bilateral upper extremity intermittent numbness and tingling. His pain level was 5/10. Dr. Frazier diagnosed cervical stenosis with bilateral symptoms, left greater than right, but no fixed neurologic deficits, negative electromyogram (EMG); left rotator cuff impingement, probable partial tear, poor response to single injection, continued impingement symptomatology; and chronic right parasternal pain of unknown etiology, but presumably costochondral inflammation or mechanical dysfunction.

Dr. Frazier rated appellant’s cervical spine impairment as five percent of the whole person due to cervical herniated nucleus pulposus, cervical stenosis, left greater than right radicular findings and negative EMG. He stated: “I believe he has a stenosis and radicular symptoms which were aggravated by this injury.” Dr. Frazier also rated appellant’s left upper extremity impairment at 11 percent for loss of motion.

An Office medical adviser reviewed Dr. Frazier’s report and a statement of accepted facts. The medical adviser noted that no consideration could be given for the cervical spine impairment because it was not a scheduled member. He noted that the Office did not accept a shoulder condition as being related to the October 18, 2000 employment injury.

In a decision dated October 10, 2002, the Office denied appellant’s claim for a schedule award. The Office found that the evidence was insufficient to support that appellant’s shoulder impairment or the diagnoses reported by Dr. Frazier were related to appellant’s federal employment.

¹ Appellant did not appeal this decision.

On appeal appellant argues that his current health problems with his neck, left upper extremity, including the shoulder and chest pains are a direct consequence of his employment injury.

The Board finds that appellant is not entitled to a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing federal regulation³ 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.⁴ Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or cervical spine, no claimant is entitled to such an award.⁵ The Act itself specifically excludes the back from the definition of "organ."⁶ Appellant is therefore not entitled to a schedule award for impairment to his cervical spine.

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, appellant may be entitled to a schedule award for permanent impairment to his left upper extremity even though the cause of the impairment originated in the spine.⁷

Dr. Frazier rated appellant's left upper extremity impairment at 11 percent for loss of motion, but there is no evidence that this permanent loss of motion was a result of the employment injury that occurred on October 18, 2000, when, while reaching forward, appellant turned his upper back to the right to place the tourniquet in a patient's left hand. When he filed his claim for compensation on November 11, 2000, appellant reported that he had felt a sharp pain in his upper back radiating to his chest. He made no mention of a left shoulder injury or pain or paresthesias in the left upper extremity. When Dr. Frazier rated appellant on July 29, 2002, he reported that appellant rotated the trunk of his body on October 18, 2000 and he felt the onset of left arm pain and paresthesias. This is inconsistent with the account given by appellant on his claim form.

Diagnostic studies of the left shoulder showed Type II acromion, with a probable partial acromial surface musculotendinous junction tear supraspinatus, as well as a possible slap lesion,

² 5 U.S.C. § 8107(a).

³ 20 C.F.R. § 10.404 (1999).

⁴ *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).

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

⁶ 5 U.S.C. § 8101(19).

⁷ *Rozella L. Skinner*, 37 ECAB 398 (1986).

which appellant stated caused significant pain at times. Dr. Frazier diagnosed left rotator cuff impingement, probable partial tear, poor response to single injection, continued impingement symptomatology, but he made no attempt to explain how rotating the trunk of the body to the right on October 18, 2000 caused or permanently aggravated this shoulder condition or otherwise caused a permanent impairment of the left upper extremity.

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence,⁸ including that he sustained an injury in the performance of duty and that any specific condition for which he claims compensation is causally related to that employment injury.⁹

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.¹⁰

Appellant has not met his burden of proof. Without a well-reasoned medical opinion explaining how appellant's accepted conditions or his trunk rotation on October 18, 2000 caused a permanent impairment of his left upper extremity, the evidence in this case is insufficient to establish that he is entitled to a schedule award.

⁸ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁰ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

The October 10, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 16, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member