U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH E. SHELTON and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

Docket No. 03-890; Submitted on the Record;
Issued June 4, 2003

DECISION and ORDER

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

The issue is whether appellant is entitled to more than a 57 percent permanent impairment for his left arm, for which he received a schedule award.

Appellant filed a claim alleging that on December 13, 1966 he struck his left arm against a steel post. The Office of Workers' Compensation Programs accepted appellant's claim for a contusion of the elbow with damage to the medial aspect of the joint.

On April 18, 1990 appellant filed a claim for a schedule award.[1]

By decision dated January 10, 1992, the Office granted appellant a schedule award for a 57 percent loss of use of his left arm.

The Office received an April 18, 2001 letter from appellant's congressional representative indicating that appellant wished to receive an additional schedule award. In an April 26, 2001 response letter, the Office advised appellant's congressional representative about the type of medical evidence appellant needed to submit to establish an additional schedule award.

The Office received a May 3, 2001 letter from Dr. Victor J. Vollrath, a general practitioner, indicating that he last examined appellant on that date and appellant continued to have partial disability of his left arm. Dr. Vollrath noted his findings on physical examination and opined that appellant had reached maximum medical improvement. He stated that appellant had about 50 percent strength loss in the grip of his left hand, very slight atrophy of the muscles of his left forearm and persistent pain and discomfort in his left wrist, which was relieved when he wore a plastic wrist brace. Dr. Vollrath concluded that appellant had about 60 percent impairment of his left hand and left forearm. He further concluded that the nerve damage of appellant's left elbow was the result of his November 13, 1966 employment injury.

[1] The record reveals that appellant retired from the employing establishment around November 1990.

By letter dated October 10, 2001, the Office advised appellant that Dr. Vollrath's letter was insufficient to establish entitlement to an additional schedule award. The Office further advised appellant to submit medical evidence in support of his claim based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In response, the Office received a November 19, 2001 report from Dr. Norman W. Oestrike, a Board-certified neurologist, noting appellant's symptoms of pain in his left elbow, and loss of strength and numbness in his left hand, a review of medical records dating back to 1968 and his findings on physical examination. Dr. Oestrike stated that it was difficult to determine whether appellant's current symptoms of his left elbow were related to his symptoms in 1968 because they were different. Regarding appellant's left hand, he stated that additional testing was necessary to determine whether appellant had carpal tunnel syndrome. Dr. Oestrike stated that the numbness in appellant's left hand was not a symptom in 1968 resulting from the 1966 employment injury. Based on Table 14, page 148 of the A.M.A., *Guides*, he opined that appellant had a one percent permanent impairment of the whole person. Dr. Oestrike related that he could not state with certainty that this impairment was related to the original injury.

In a December 5, 2001 letter, the Office advised Dr. Oestrike that authorization was granted for the requested testing. The Office requested that Dr. Oestrike determine whether appellant's carpal tunnel syndrome was related to the 1966 employment injury. Further, the Office advised Dr. Oestrike to calculate an impairment rating for appellant's left upper extremity based on the fifth edition of the A.M.A., *Guides* because the Federal Employees' Compensation Act does not recognize an impairment rating of the whole person.

In a January 7, 2002 report, Dr. Oestrike stated that electromyography and nerve conduction studies that day revealed "very significant" left carpal tunnel syndrome, mild cubital tunnel syndrome and a suggestion of entrapment of the ulnar nerve in the Guyon's canal. He stated that appellant's carpal tunnel syndrome of the left hand was his "current disabling symptom." Dr. Oestrike stated that it was unlikely that this condition was related to the 1966 injury, as that injury was to his elbow, not his wrist. Based on Table 16-10, page 482, which evaluated the peripheral nerve, he stated that appellant had a Grade II impairment with a sensory deficit of 61 to 80 percent of the left upper extremity.

An Office medical adviser reviewed appellant's medical records including Dr. Oestrike's January 7, 2002 report. In a September 11, 2002 letter, the Office medical adviser stated that he was unable to provide a permanent impairment rating because Dr. Oestrike's findings were unclear. The Office medical adviser requested that Dr. Oestrike reevaluate appellant according to proper use of the A.M.A., *Guides* as he set forth.

By letter dated October 4, 2002, the Office requested that Dr. Oestrike provide additional information based on the Office medical adviser's letter. In an undated letter, Dr. Oestrike stated that he used the fifth edition of the A.M.A., *Guides* as best as he understood it. He further stated that appellant had significant carpal tunnel syndrome. Dr. Oestrike stated:

> "Per Table 16-10, page 482, it is a Grade 2 sensory deficit and I assigned 80 percent deficit.

"The conversion factor for the median nerve from Table 16-15, page 492 is 39 percent for the sensory deficit. The product of these two is 31.2 percent or 32 percent or rounded up to 32 percent for the median sensory nerve deficit.

"The motor deficit was evaluated using Table 16-11, page 484, Grade 4. Assigning 25 percent nerve impairment and multiplying it times the conversion factor of 10 percent from Table 16-5, results in a 2.5 percent nerve impairment in which I rounded up to 3 percent.

"The ulnar motor deficit I assigned Grade 5, which had 0 percent motor deficit.

"For ulnar sensory deficit, I assigned Grade 4, which is 1 to 25 percent. Since the sensory findings in the ulnar distribution were mild, I assigned it 12 percent for the ulnar nerve. Multiplying this by 7 percent figure from Table 16-5 for the ulnar nerve above the mid forearm results in an upper extremity impairment of 1 percent. Since there is no ulnar motor deficit this results in upper extremity impairment due to the ulnar nerve of one percent.

"Converting this on page 439, Table 16-3, to impairment of the whole person results in a 1 percent impairment of the whole person.

"This does not include the significant impairment due to the median nerve as the accepted facts are that the median nerve impairment is not work related for purposes of this claim."

On November 13, 2002 the Office medical adviser reviewed Dr. Oestrike's letter. The Office medical adviser determined that the ulnar nerve motor deficit was Grade 5 which constituted a zero percent impairment based on Table 16-11, page 484 and the ulnar nerve sensory deficit was Grade 4 which constituted a 12 percent impairment according to Table 16-10, page 482. The maximum sensory ulnar deficit was 7 percent based on Table 16-15, page 492. The Office medical adviser multiplied 12 percent by 7 percent and concluded that appellant had a 1 percent permanent impairment of the left upper extremity. The Office medical adviser further concluded that appellant's carpal tunnel syndrome was not work related.

By decision dated November 26, 2002, the Office found the evidence of record insufficient to establish that appellant was entitled to more than a 57 percent permanent impairment for his left upper extremity, for which he received a schedule award.

The Board finds that appellant is not entitled to more than a 57 percent permanent impairment for his left arm, for which he received a schedule award.

The schedule award provisions of the Act[2] and its implementing regulation[3] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.404.

compensation is paid in proportion to the percentage of loss of use.[4] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A, *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[5]

In finding that appellant had a one percent permanent impairment of the left upper extremity, the Office medical adviser relied on Dr. Oestrike's findings in his undated letter. Utilizing Table 16-11, page 484, Table 16-10, page 48 and Table 16-15, page 492 of the fifth edition of the A.M.A., *Guides*, the Office medical adviser determined that appellant had a 1 percent impairment of the left upper extremity.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 57 percent permanent impairment for the loss of use of his left upper extremity. Further, the Board notes that Dr. Oestrike, appellant's own treating physician, determined that appellant had less than a 57 percent permanent impairment of the left upper extremity based on the A.M.A., *Guides*. Appellant has failed to provide probative, supportable medical evidence that he has greater than a 57 percent impairment already awarded.

The November 26, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 4, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] 5 U.S.C. § 8107(c)(19).

[5] *Thomas D. Gunthier*, 34 ECAB 1060 (1983).