U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNESTO N. CAMARILLO and DEPARTMENT OF VETERANS AFFAIRS, AUDIE L. MURPHY MEMORIAL HOSPITAL, San Antonio, TX

Docket No. 03-273; Submitted on the Record;
Issued March 18, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 25 percent permanent impairment of each upper extremity, for which he received a schedule award.

On March 15, 2001 appellant filed a claim for a bilateral wrist condition he attributed to his federal employment. His claim was accepted for bilateral tenosynovitis. The Office of Workers' Compensation Programs authorized surgery for bilateral carpal tunnel syndrome and appellant underwent release procedures on September 27 and October 25, 2001 by Dr. Richard P. Wilson, a Board-certified orthopedic surgeon.

Appellant returned to light-duty work on January 15, 2002 with restrictions on some of his duties. Thereafter, he requested a schedule award. Dr. Wilson stated in an April 22, 2002 report that appellant had a 26 percent permanent impairment of each of his upper extremities. The Office medical adviser reviewed Dr. Wilson's findings and calculated a 25 percent impairment to each upper extremity.

On September 23, 2002 the Office issued a schedule award for a 25 percent permanent impairment of each of appellant's upper extremities. The award ran from April 22, 2002 to April 17, 2005 at the rate of $1,106.64 every four weeks.

The Board finds that appellant has no more than a 25 percent impairment of both upper extremities for which he has received a schedule award.

Section 8107 of the Federal Employees' Compensation Act[1] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions

[1] 5 U.S.C. §§ 8101-8109.

and organs of the body.[2] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined.

To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[3] The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.[4]

The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date.

Dr. Wilson noted that appellant continued to complain of pain in his wrists and arms and had some tendinitis. He found no loss of motion on flexion or extension and full range of motion of the elbows and shoulders. In calculating the sensory loss, Dr. Wilson noted a maximum 39 percent impairment allowed under Table 16-15, page 492, for sensory deficit or pain in the median nerve below the mid forearm. Dr. Wilson then applied Table 16-10 to grade the sensory deficit as Grade 3, which allows up to 60 percent of sensory deficit. According to the instructions in Table 16-10, page 482, 60 percent of 39 percent results in a 23 percent impairment rating for sensory loss. For the median nerve below the forearm, the maximum motor deficit impairment is 10 percent according to Table 16-15, page 492. This was graded as a Grade 4 or 25 percent motor deficit and Table 16-11, 25 percent of 10 percent totals a 3 percent impairment for motor deficit. The record reflects that Dr. Wilson then added the impairment values to total a 26 percent impairment of each upper extremity.

In reviewing Dr. Wilson's calculations, the Office medical adviser applied Table 16-11, page 484 and Table 16-15, page 492 for motor deficit to find a maximum of 10 percent and a Grade 4 of 25 percent, which multiplied equals 3 percent. For sensory deficit, he applied Table 16-10, page 482 and Table 16-15, page 492 to find a maximum 39 percent and a Grade 3 of 60 percent, which multiplied together equals 23 percent. Applying the combined tables, the total rating is 25 percent for each upper extremity. The Office medical adviser noted that Dr. Wilson had added the impairment values together, rather than combining them as instructed in the fifth edition of the A.M.A., *Guides* at Figure 16.5b, page 481.[5]

The Board finds that the Office medical adviser properly applied the standards in the fifth edition of the A.M.A., *Guides* and that therefore appellant has more than a 25 percent

[2] 5 U.S.C. § 8107.

[3] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[4] 20 C.F.R. § 10.404 (1999).

[5] For impairment with a mixed motor and sensory loss, the values are combined to obtain the total upper extremity impairment value.

impairment of both the right and left upper extremities.[6] Under section 8107(c)(1) a 100 percent or total loss of use of the arm represents 312 weeks of compensation. Twenty-five percent of 312 weeks amounts to entitlement to a schedule award for 78 weeks of compensation. As appellant sustained loss to both his right and left upper extremities, the Office properly determined that he was entitled to a total of 156 weeks of compensation, representing 25 percent impairment to both upper extremities.

On appeal, appellant contends that, as his impairment is permanent, he should receive a greater amount of compensation. However, in making schedule awards for impairment, Congress has specified the payment for specific numbers of weeks as prescribed in 8107(c). To the extent that appellant contends that his injury causes lifestyle changes he will take into retirement, such factors are not considered in determining permanent impairment.[7] This holds true regardless of the effect of his impairment upon employment opportunities, sports. Hobbies or other activities.[8] There is no basis for a schedule award greater than the 25 percent granted for loss of use of each upper extremity.

The September 23, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 18, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[6] *See Richard F. Kastan*, 48 ECAB 651, 653 (1997) (finding that the Office medical adviser's report provided the only evaluation that conformed to the A.M.A., *Guides* and thus represented the weight of the evidence).

[7] *See Loren Marovelli*, Docket No. 96-1257 (issued February 24, 1998).

[8] *See Robert R. Kuehl*, 13 ECAB 77 at 78 (1961).