

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY CIRCELLI and U.S. POSTAL SERVICE,
POST OFFICE, New Castle, PA

*Docket No. 03-485; Submitted on the Record;
Issued March 18, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained an ulnar nerve condition or reflex sympathetic dystrophy (RSD) as a result of the November 1, 1990 employment injury or November 23, 1990 surgery; and (2) whether appellant is entitled to an amended schedule award for permanent impairment to his left arm.

In the prior appeal of this case,¹ the Board found that the case was not in posture for decision. Although Dr. Jack P. Failla, a Board-certified orthopedic surgeon and impartial medical specialist, reported that appellant did not currently suffer residuals of an ulnar nerve condition or RSD, his findings failed to address the fundamental question of whether appellant sustained an ulnar nerve condition or RSD as a result of the accident that occurred at work on November 1, 1990. The Board remanded the case for a supplemental opinion from the impartial medical specialist.

The Board also set aside the schedule award issued on November 14, 2000. Because the Office of Workers' Compensation Programs accepted a November 1, 1990 left hand injury, it was premature to issue a schedule award for permanent impairment to the left arm without a reasoned medical opinion addressing whether permanent residuals of the November 1, 1990 injury extended beyond the hand and into the arm. The Board directed the Office to obtain an opinion on this issue from Dr. Failla. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

On remand the Office asked Dr. Failla to review the medical evidence and advise if the diagnostic tests or medical reports demonstrated that appellant sustained an ulnar nerve condition or RSD as a result of the November 1, 1990 injury or November 23, 1990 surgery. The Office also asked Dr. Failla whether appellant suffered any permanent residuals or impairment of the left hand that extended into the left arm.

¹ Docket No. 01-955 (issued May 3, 2002).

In a report dated August 23, 2002, Dr. Failla described his current findings on physical examination. Appellant demonstrated no evidence of atrophy of his left hand or arm and no evidence of RSD. There was no evidence of ulnar nerve injury from a motor standpoint, although subjectively appellant claimed some change in sensation over the ulnar distribution of his fourth and fifth fingers. Dr. Failla could not confirm this. He addressed the questions presented as follows:

“Upon review of my original Independent Medical Evaluation and again review of all the records, I can state without equivocation that there was never any medical evidence in [appellant] of reflex sympathetic dystrophy. Also [appellant’s] injury involved primarily the fourth and fifth digits of his left hand and did not involve any other aspect of his arm. In fact, there was never any firm evidence of ulnar nerve injury, either clinically or electrically in the record. Therefore, I can state without equivocation that there was no injury to the ulnar nerve as a result of the injury of November 1, 1990.

“I also believe with a reasonable degree of medical certainty that there is no permanent residual impairment of the left hand that extended into the left arm as a result of this injury. Hopefully this information is helpful in clarifying this case.”

In a decision dated September 23, 2002, the Office found that Dr. Failla’s opinion carried special weight in resolving the outstanding conflict and established no ulnar nerve injury or RSD resulting from the accepted work injury and no impairment extending into the left arm. The Office found that appellant was not entitled to an amended schedule award for permanent impairment to the left arm.

The Board finds that the weight of the medical opinion establishes that appellant did not sustain an ulnar nerve condition or RSD as a result of the November 1, 1990 employment incident or November 23, 1990 surgery. The Board also finds that appellant is not entitled to an amended schedule award for permanent impairment to his left arm.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.²

The Office provided Dr. Failla with the case record and a statement of accepted facts so that he could base his opinion on a proper factual and medical background. He described his current findings on physical examination and again reviewed appellant’s medical records. The Board finds that his opinion is sufficiently well reasoned; that it constitutes the weight of the medical evidence and resolves whether appellant sustained an ulnar nerve condition or RSD as a result of his November 1, 1990 employment injury or November 23, 1990 surgery. Dr. Failla’s opinion also resolves whether appellant is entitled to an amended schedule award for the left arm.

² *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

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

Dated, Washington, DC
March 18, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member