

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS M. BAHL and U.S. POSTAL SERVICE,
POST OFFICE, Marshalltown, IA

*Docket No. 03-1588; Submitted on the Record;
Issued October 1, 2003*

DECISION and ORDER

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

The issue is whether appellant has more than a five percent impairment of his right upper extremity, for which he received a schedule award.

On February 24, 2000 appellant, then a 41-year-old distribution clerk, filed an occupational disease claim alleging that he sustained injuries to his neck, right shoulder and right arm in the performance of duty. Appellant identified February 1, 2000 as the date he first became aware of his employment-related condition. Appellant was diagnosed with multilevel degenerative disc disease of the cervical spine, including a herniated disc at C6-7. On February 15, 2000 appellant underwent cervical discectomy, fusion and fixation at C5-6 and C6-7. The Office of Workers' Compensation Programs initially denied the claim on June 15, 2000, and twice denied modification on November 22, 2000 and June 18, 2001. Appellant filed an appeal with the Board, and, in a decision dated May 1, 2002, the Board found that appellant established a causal relationship between his cervical condition and his employment. Accordingly, the Board reversed the Office's prior decisions.¹ On June 3, 2002 the Office accepted appellant's claim for aggravation of cervical disc disease at C5-6, C6-7 and surgical repair. Appellant received appropriate wage-loss compensation for intermittent periods of disability dating back to December 4, 1999.

On June 25, 2002 appellant filed a claim for a schedule award. Appellant had previously submitted a February 21, 2001 report from Dr. William C. Koenig, Jr., a Board-certified physiatrist, who calculated a five percent permanent impairment of the right upper extremity due to appellant's cervical spine pathology. Appellant also submitted a February 11, 2003 report from his treating physician, Dr. Margaret J. Fehrle, a Board-certified orthopedic surgeon, who determined that he had a 25 percent whole body impairment due to his neck fusion. In a subsequent report dated April 9, 2003, Dr. Fehrle advised that appellant had reached maximum medical improvement from his neck injury and she reiterated her earlier assessment of a 25

¹ The Board's decision is incorporated herein by reference. Docket No. 02-7 (issued May 1, 2002).

percent whole body impairment. The Office medical adviser reviewed the record, including the reports of Drs. Koenig and Fehrle, and, in a report dated April 21, 2003, he determined that appellant had a five percent right upper extremity impairment in accordance with Dr. Koenig's February 21, 2001 findings.

By decision dated May 6, 2003, the Office granted appellant a schedule award for a five percent impairment of the right upper extremity. The award covered a period of 15.6 weeks from February 21 to June 10, 2001.

The Board finds that appellant failed to establish that he has more than a five percent impairment of the right upper extremity.

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, function 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁴

Neither the Act nor the regulations authorize payment of a schedule award for permanent impairment of the neck, back or whole body.⁵ Dr. Fehrle stated that appellant had a 25 percent whole body impairment due to his neck fusion. She did not specifically address what effect, if any, appellant's cervical condition had on his upper extremities. As a schedule award is not payable for a permanent impairment of either the neck or whole body, Dr. Fehrle's February 11 and April 9, 2003 reports are of limited probative value in determining the extent of appellant's permanent impairment.⁶

Unlike Dr. Fehrle, Dr. Koenig described the effects of appellant's cervical condition on his upper extremity. He explained that appellant's remaining residua are consistent with a very mild C7 nerve root irritation. Dr. Koenig stated that, according to Table 16-13 at page 489 of the A.M.A., *Guides*, appellant had a 38 percent maximum upper extremity impairment due to combined motor/sensory deficits. Referring to Table 16-10 at page 482 of the A.M.A., *Guides*, Dr. Koenig explained that appellant's condition was consistent with a Grade 4 lesion, which provides for a range of 1 to 25 percent sensory deficit. In view of appellant's subtle weakness

² The Act provides that, for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1).

³ 20 C.F.R. § 10.404 (1999).

⁴ FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁵ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) (1999).

⁶ *Phyllis F. Cundiff*, 52 ECAB 439, 440 (2001).

and reflex change and mindful of the component from sensation (pain), Dr. Koenig indicated that appellant's condition represented a 12.5 percent sensory deficit on a scale of 1 to 25 percent. Multiplying the 12.5 percent sensory deficit under Table 16-10 by the maximum 38 percent upper extremity impairment at C7 under Table 16-13, Dr. Koenig concluded that appellant had a 4.75 percent permanent impairment of the right upper extremity due to his cervical spine pathology. He then rounded the impairment up to five percent.

As previously noted, the Office medical adviser reviewed Dr. Koenig's five percent impairment rating and he correctly reported that the doctor's rating was consistent with Tables 16-10 and 16-13 of the A.M.A., *Guides* (5th ed. 2001). Accordingly, appellant failed to establish that he has more than a five percent impairment of his right upper extremity.

The May 6, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 1, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member