

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**MICHAEL S. SPURKLE, Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL  
SURFACE WARFARE CENTER,  
Philadelphia, PA, Employer**

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**Docket No. 04-1641  
Issued: December 29, 2004**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On June 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 29, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.<sup>1</sup>

**ISSUE**

The issue is whether appellant is entitled to a schedule award for his left or right arm or an additional schedule award for his left leg.

**FACTUAL HISTORY**

This is the second appeal in this case. The Board issued a decision on January 18, 2002 affirming an April 27, 2000 decision of the Office finding that it properly terminated appellant's

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<sup>1</sup> The record contains a February 11, 2004 decision approving fees for services rendered by appellant's attorney. Appellant has not appealed this decision and the matter is not currently before the Board.

compensation effective April 27, 2000 because he had no residuals of his July 8, 1997 employment injury after that date.<sup>2</sup> On July 8, 1997 appellant, then a 58-year-old police officer, sustained an employment-related cervical strain, cervical radiculopathy, lumbar strain, lumbar radiculopathy and left knee sprain when he stepped into a hole and fell down.<sup>3</sup> The Office based its April 27, 2000 termination on the March 2, 2000 report of Dr. Herbert Stein, a Board-certified orthopedic surgeon, who served as an impartial medical specialist.<sup>4</sup> The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

Appellant claimed that he was entitled to a schedule award for his left and right arm and an additional schedule award for his left leg due to his accepted employment injuries.<sup>5</sup> In support of his claim, he submitted a May 9, 2002 report of Dr. David Weiss, an attending Board-certified osteopath. In his report, he reported the findings of his examination and diagnosed chronic post-traumatic cervical and lumbosacral strain and sprain; post-traumatic internal derangement of the left knee; aggravation of preexisting left knee pathology (including a medial meniscus tear and degenerative joint disease); post-traumatic patellae chondromalacia; bulging disc at L3-4; spondylolisthesis at L4-S1; bulging discs at C4-5, C5-6 and C6-7 with degenerative disc disease; left carpal tunnel syndrome; left C6 radiculopathy; and left lumbar radiculopathy. Dr. Weiss determined that appellant had a 40 percent permanent impairment of his left arm due to a grip strength deficit of his left hand; sensory deficit associated with his C6 and C7 nerve roots; and pain-related deficit not related to a particular nerve root. He also found that appellant had a 23 percent permanent impairment of his right arm due to grip strength deficit of his right hand and pain-related deficit not related to a particular nerve root. Dr. Weiss determined that appellant had a 28 percent permanent impairment of his left leg due to a motor strength deficit of the left knee; sensory deficit associated with the L4, L5 and S1 nerve roots; left patellofemoral pain/crepitation; and pain-related deficit not related to a particular nerve root. He indicated that appellant had reached maximum medical improvement by May 9, 2002 and stated, "The work[-]related injury [of] July 8, 1997 was the competent producing factor for the patient's subjective and objective findings of today."

In a report dated August 15, 2002, the Office district medical director indicated that he did not agree with Dr. Weiss' assessment of permanent impairment. He noted that Dr. Weiss had attributed appellant's permanent impairment to an employment injury, but that the opinion of

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<sup>2</sup> Docket No. 00-2448 (issued January 18, 2002).

<sup>3</sup> The Office had previously accepted that appellant sustained a torn medial and lateral meniscus of his left knee on March 16, 1990 due to stepping into a vehicle at work and in May 1990 he underwent arthroscopic knee surgery. In September 1990 appellant returned to his regular work as a police officer for the employing establishment. Appellant also sustained a left ankle sprain, left knee sprain and back contusion on November 23, 1993 due to a fall at work. He was off work following the injury until February 1994 when he returned to limited-duty work; he later returned to regular-duty work for the employing establishment. In connection with the March 16, 1990 injury, appellant received a schedule award for a 23 percent permanent impairment of his left leg.

<sup>4</sup> The Board noted that the opinion of Dr. Stein also showed that appellant did not have any residuals of his March 16, 1990 or November 23, 1993 employment injury.

<sup>5</sup> As noted above, appellant previously received a schedule award for a 23 percent permanent impairment of his left leg.

Dr. Stein, as “upheld” by the Board, had established that appellant did not have any employment-related residuals.

By decision dated November 21, 2002, the Office determined that appellant did not meet his burden of proof to establish that he was entitled to a schedule award for his left or right arm or an additional schedule award for his left leg. The Office denied appellant’s claim on the grounds that the medical evidence did not show that the claimed permanent impairment was related to any accepted employment injury.

Appellant requested a hearing before an Office hearing representative. At the hearing which was held on October 28, 2003, appellant contended that he had permanent impairment not only due to his prior employment injuries, but also due to employment-related carpal tunnel syndrome of his left arm.<sup>6</sup>

By decision dated and finalized January 29, 2004, the Office hearing representative affirmed the Office’s November 21, 2002 decision.

### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees’ Compensation Act<sup>7</sup> has the burden of establishing the essential elements of his claim, including that he sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.<sup>8</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

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<sup>6</sup> The record contains a July 22, 1999 report in which Dr. Todd M. Lipschultz, an attending Board-certified orthopedic surgeon, stated that appellant reported experiencing left hand pain and numbness after, but not before, his July 8, 1997 accident. Dr. Lipschultz stated that the July 8, 1997 fall “could have resulted in a traumatic acute carpal tunnel syndrome.”

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> See *Bobbie F. Cowart*, 55 ECAB \_\_\_\_ (Docket No. 04-1416, issued September 30, 2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

<sup>9</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

## ANALYSIS

In the present case, appellant claimed that he was entitled to a schedule award for his left and right arm and an additional schedule award for his left leg due to his accepted employment injuries.<sup>10</sup> In support of his claim, he submitted a May 9, 2002 report of Dr. Weiss, an attending Board-certified orthopedic surgeon. Dr. Weiss concluded that appellant had a 40 percent permanent impairment of his left arm, a 23 percent permanent impairment of his right arm and a 28 percent permanent impairment of his left leg. He stated, “The work[-]related injury July 8, 1997 was the competent producing factor for the patient’s subjective and objective findings of today.”

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Weiss did not provide adequate medical rationale in support of his conclusion on causal relationship.<sup>11</sup> Dr. Weiss did not adequately explain how the claimed permanent impairment of appellant’s left and right arms and left leg was related to the July 8, 1997 employment injury. He did not describe the employment injury in any detail or describe how it could have been competent to contribute to permanent impairment, nor did he explain why appellant’s continuing condition was not solely due to nonwork-related degenerative cervical and lumbar disc disease. Such medical rationale is especially necessary in the present case in that the Board has determined, in its January 18, 2002 decision, that appellant had no residuals of his July 8, 1997 employment injury after April 27, 2000.<sup>12</sup> In addition, the Office district medical director determined in his August 15, 2002 report that an employment-related injury did not contribute to appellant’s claimed permanent impairment.

Appellant also alleged that employment-related carpal tunnel syndrome of his left arm contributed to his claimed permanent impairment. However, the Office has not accepted that he sustained employment-related carpal tunnel syndrome and the medical evidence of record does not support such a finding. The record contains a July 22, 1999 report in which Dr. Lipschultz, an attending Board-certified orthopedic surgeon, stated that appellant’s July 8, 1997 injury “could have resulted in a traumatic acute carpal tunnel syndrome.” This report is of limited

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<sup>10</sup> On July 8, 1997 appellant sustained an employment-related cervical strain, cervical radiculopathy, lumbar strain, lumbar radiculopathy and left knee sprain. The Office previously accepted that he sustained a torn medial and lateral meniscus of his left knee on March 16, 1990 and a left ankle sprain, left knee sprain and back contusion on November 23, 1993. Appellant previously received a schedule award for a 23 percent permanent impairment of his left leg in connection with the May 16, 1990 injury.

<sup>11</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>12</sup> The Board also determined in its January 18, 2002 decision that appellant did not have any residuals of his March 16, 1990 or November 23, 1993 employment injury after April 27, 2000. After the Board’s decision, appellant did not file a claim that he sustained a recurrence of disability due to his employment injuries.

probative value on the relevant issue of the present case in that it contains an opinion on causal relationship which is speculative in nature.<sup>13</sup>

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he was entitled to a schedule award for his left or right arm or an additional schedule award for his left leg.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 29, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>13</sup> See *Jennifer Beville*, 33 ECAB 1970, 1973 (1982), *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (finding that an opinion which is speculative in nature is of limited probative value on the issue of causal relationship).