

United States Department of Labor
Employees' Compensation Appeals Board

JOHN L. KLEIN, Appellant

and

DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD,
Philadelphia, PA, Employer

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Docket No. 05-1472
Issued: December 1, 2005

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, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On July 5, 2005 appellant filed a timely appeal from the March 4, 2005 merit decision of the Office of Workers' Compensation Programs, which found that he had no more than a 15 percent permanent impairment of each upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award issue.

ISSUE

The issue is whether appellant has more than a 15 percent permanent impairment of each upper extremity.

FACTUAL HISTORY

On December 20, 1988 appellant, then a 51-year-old machinist, filed a claim for compensation alleging that his duties made his hands ache and his fingers tingle. The Office accepted his claim for bilateral carpal tunnel syndrome and approved multiple surgeries. Appellant filed a claim for a schedule award.

On April 19, 1996 the Office issued a schedule award for a 10 percent permanent impairment of each upper extremity. On May 6, 1997 the Office issued an additional award of five percent for each upper extremity based on the report of an impartial medical specialist. In a decision dated March 30, 1998, an Office hearing representative affirmed the additional schedule award. But on June 27, 2000 the Board found that the case was not in posture for a decision on whether appellant had more than a 15 percent permanent impairment of each upper extremity. Finding that the opinion of the impartial medical specialist required clarification, the Board remanded the case for further development.¹

Because the impartial medical specialist had retired, the Office referred appellant, together with a statement of accepted facts and the case record, to another impartial medical specialist, Dr. Howard S. Caplan, a Board-certified orthopedic surgeon specializing in hand surgery.

In a report dated October 16, 2000, Dr. Caplan related appellant's history, current complaints and findings on physical examination. He then provided his opinion on permanent impairment:

"It is my opinion with a reasonable degree of medical certainty that [appellant] has residual deficits involving both median nerves as a direct result of his bilateral carpal tunnel syndromes. These were work related to his occupation as a machinist at the Navy Yard. The cumulative trauma disorder has left him with some scarring involving his medial nerves and thus a residual neuromesis with continued median nerve symptoms. This most likely represents scarring around the median nerve but this could be further studied with EMGs [electromyograms] and an MRI [magnetic resonance imaging] [scan] to see if there is any residual ligament causing symptoms. This is unlikely with his equivocal Phalen's sign.

"[Appellant] has partial permanent disability relating to his median nerves. Evaluation according to the A.M.A., [American Medical Association,] *Guide to the Evaluation of Permanent Impairment*, [fourth] [e]dition, would give him a 10 percent partial permanent disability involving each upper extremity because of his mild residual median nerve symptoms at the wrist.

"The above opinions are rendered with a reasonable degree of medical certainty. It is unlikely that any medical improvement would be expected and unless there is something noted on the above suggested studies, further operative intervention is not indicated. Range of motion of his arms and wrists are normal and sensory impairment is limited to his median nerves bilaterally. There is no instability or arthritic changes."

In a decision dated October 24, 2000, the Office found that appellant had no more than a 15 percent permanent impairment of each upper extremity. On February 20, 2001 however an Office hearing representative ruled that a supplemental report from Dr. Caplan was warranted. The hearing representative stated that Dr. Caplan should specify the table or tables in the

¹ Docket No. 98-2055 (issued June 27, 2000).

A.M.A., *Guides* on which he based his rating, as well as provide the reason he felt appellant had a mild impairment as opposed to a moderate one.

In a supplemental report dated April 12, 2001, Dr. Caplan responded to the Office's request for clarification:

"In response to your letter of March 20, 2001, indeed the impairment rating referred to in my correspondence of October 16, 2000, utilized the [fourth] [e]dition, A.M.A., *Guides to the Evaluation of Permanent Impairment*, page 57, Table 16. Mild rather than moderate involvement was selected as [appellant's] complaints related to intermittent tingling with minimally decreased two-point discrimination in the sensory distribution of the median nerve.

"He had improved as far as his compression symptoms and was quite functional in his present lighter[-]duty occupation on a part-time basis."

In a decision dated January 31, 2002, the Office found that the weight of the medical evidence demonstrated that appellant had no more than a 15 percent permanent impairment of each upper extremity.

In a decision dated March 4, 2005, an Office hearing representative affirmed, finding that Dr. Caplan's opinion constituted the weight of the medical evidence.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.³

Section 8123(a) of the Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁴ 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.⁵

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001). Awards calculated according to any previous edition are evaluated according to the edition originally used. FECA Bulletin No. 01-05 (issued January 29, 2001).

⁴ 5 U.S.C. § 8123(a).

⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

ANALYSIS

Table 16, page 57, of the A.M.A., *Guides* (4th ed. 1993) provides diagnosis-related estimates of upper extremity impairment due to entrapment neuropathy. Under this table, impairment of the upper extremity secondary to an entrapment neuropathy is estimated according to the severity of involvement of each major nerve at each entrapment site. For the median nerve trapped at the wrist, upper extremity impairment may be 10 percent for mild involvement, 20 percent for moderate involvement or 40 percent for severe involvement. Page 56 of the A.M.A., *Guides* gives an example of how the evaluating physician may weigh symptoms and clinical findings to rate an upper extremity impairment following surgical decompression of the median nerve in the right carpal tunnel.

Dr. Caplan, the impartial medical specialist, reported on October 16, 2000 that appellant had a 10 percent permanent impairment of each upper extremity because of mild residual median nerve symptoms at the wrist. But he did not indicate how he came to this rating. Dr. Caplan did not identify what table he used in the A.M.A., *Guides* and he did not explain how his findings supported a mild involvement of the median nerves.

Dr. Caplan cured these deficiencies in his April 12, 2001 supplemental report. He stated that he had used Table 16, page 57, of the A.M.A., *Guides*. Dr. Caplan clarified that he selected the mild rather than the moderate involvement under that table because appellant's complaints related to intermittent tingling with minimally decreased two-point discrimination in the sensory distribution of the median nerve. This is a reasonable explanation of his rating and is consistent with a proper application of the A.M.A., *Guides*. As the opinion of the impartial medical specialist is based on a proper history and is well reasoned, the Board finds that it must be accorded special weight in resolving whether appellant has more than a 15 percent permanent impairment of each upper extremity. He does not. The Board will therefore affirm the Office's March 4, 2005 decision.

CONCLUSION

The Board finds that appellant has no more than a 15 percent permanent impairment of each upper extremity, for which he has previously received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board