United States Department of Labor
Employees' Compensation Appeals Board

DENIS J. HAINSWORTH, Appellant	)	
and	)	**Docket No. 04-1020**
	)	**Issued: March 17, 2005**
DEPARTMENT OF THE ARMY, NATIONAL GUARD BUREAU, Bordentown, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 8, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated November 26, 2003, denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has any permanent impairment of his right upper extremity causally related to a January 19, 1994 employment-related right wrist sprain, thereby, entitling him to a schedule award.

FACTUAL HISTORY

On January 19, 1994 appellant, then a 34-year-old tool and parts attendant, filed a traumatic injury claim alleging that on that date he injured his right wrist when he slipped on ice in the employee parking lot. The Office accepted his claim for a right wrist sprain.

In a March 15, 1995 report, Dr. Frederic C. Stieg, a Board-certified family practitioner, noted that appellant experienced pain after his January 19, 1994 employment injury and developed depression because of the continuation of symptoms and the limitation of his functional capacities. He provided findings on examination and diagnosed second-stage reflex sympathetic dystrophy (RSD).[1]

In a March 19, 1996 report, Dr. Stieg stated that appellant's RSD was causally related to his employment-related right wrist sprain on January 19, 1994. He indicated that clinical psychological services were required because of "psychological distress including depression, anxiety and sleep disturbance resulting from loss of function of his right hand.

In a November 27, 1996 report, Patricia Romano, a licensed clinical psychologist, indicated that appellant had received psychotherapy twice a week since August 19, 1996 for treatment of his employment injury.[2] In a November 11, 1998 report, Dr. Romano stated that appellant had a chronic medical disability resulting from his right arm injury. She stated that she was treating him for depression that appeared to be related to his right arm injury.

In a report dated February 6, 2001, Dr. David Weiss, a Board-certified family practitioner, provided findings on examination and diagnosed chronic post-traumatic right wrist strain and sprain, right carpal tunnel syndrome and complex regional pain syndrome. He opined that appellant had an 86 percent impairment of the right upper extremity causally related to his January 19, 1994 employment injury that included decreased range of motion of the right hand and fingers and motor and sensory deficit of the right forearm and hand. In an April 26, 2001 note, Dr. Stieg stated that he concurred with Dr. Weiss' determination that appellant had an 86 percent impairment of the right upper extremity.

On May 4, 2001 appellant filed a claim for a schedule award.

In a memorandum dated May 15, 2001, the district medical director stated:

> "[Appellant] has cerebral palsy. The measurements made must separate the cerebral palsy deficits from the wrist sprain deficit. I suggest we request [another medical examination] to better determine the sprain deficit. Dr. Weiss has made calculations based on the preexisting cerebral palsy."

By letter dated May 31, 2001, the Office referred appellant, together with a statement of accepted facts and the medical records, to Dr. Gregory S. Maslow, a Board-certified orthopedic surgeon, for an examination and evaluation of whether appellant had any permanent impairment of his right arm causally related to the January 19, 1994 right wrist sprain.

[1] In a June 28, 1996 report, Dr. Louis S. Zeiger, a radiologist, indicated that a bone scan of appellant's right hand did not support a diagnosis of RSD involving the right hand and wrist. In an October 3, 1996 report, he indicated that a bone scan revealed findings consistent with either disuse of the right extremity or a variant of RSD.

[2] In a December 11, 1996 letter, Dr. Stieg advised the Office that he had referred appellant to Dr. Romano as part of a pain management program.

In a July 3, 2001 report, Dr. Maslow provided findings on examination and opined that appellant had no impairment of the right upper extremity. He stated:

> "The examination today is extremely unusual. [Appellant] who is left hand dominant, appears in the office using a splint for the forearm and wrist on the right side. [He] holds the right upper extremity very tightly against his body with his fingers fully clenched.… There does not appear to be any acute distress but [appellant] will not use the right upper extremity in getting on and off the table, and will not take the right upper extremity away from his body voluntarily.… [Appellant] holds the right arm with the elbow flexed. When I tried to extend the elbow, he resists very considerably. It does not again appear to be a fixed contracture, but he allows only a 10 degree arc of motion at the elbow and complains of a great deal of discomfort.… When I get [appellant] to relax somewhat I am able to fully extend the thumb DIP [distal interphalangeal] joint and the thumb MCP [metacarpophalangeal] joint, although he complains of pain when doing so. I am unable to really extend at all the four fingers of the right hand as he resists vigorously. I say resist because during the exam[ination] there is an obvious effort of muscular contraction to hold the fingers flexed.… I do find some very slight thenar atrophy but is difficult to evaluate….
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> "In my opinion, [appellant] presents a very unusual problem at the right upper extremity, but I strongly feel after examining [him] that he does not have orthopedic disability.
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> "This examination showed a man with extreme complaints related to the right upper extremity but I feel there is a psychologic problem here and not an orthopedic problem. There has been no convincing evidence to my mind that [appellant] has reflex sympathetic dystrophy and in fact there has been previous testing which indicated that he did not. There is no convincing neurologic deficit in the upper extremity. [Appellant] does have hyper reflexia in the lower extremities which may be ascribed to his cerebral palsy. [He] appears in the office well dressed and it appears to me that a patient who cannot even move the fingers or thumb on his right hand could not manage to dress this way. I asked [appellant] how he was able to get his shirt on and he did not have an answer for me. I would offer an opinion that [appellant] has zero orthopedic disability at the right upper extremity, with the original diagnosis in 1994 being wrist sprain superimposed on degenerative joint disease. If it has not been done, a psychiatric evaluation clearly is indicated here."

Due to the conflict in the medical opinion evidence between Drs. Weiss and Maslow, the Office referred appellant, together with copies of medical reports and the statement of accepted facts, to Dr. Evan O'Brien, a Board-certified orthopedic surgeon.

In a report dated October 3, 2001, Dr. O'Brien indicated that he had reviewed the medical evidence, including the results of diagnostic tests. He provided a history of appellant's condition, detailed findings on examination and opined that he had no impairment of the right

upper extremity causally related to his January 19, 1994 employment-related right wrist sprain. Dr. O'Brien stated:

> "[Appellant's] appearance is somewhat striking because of the abnormal position of the right upper extremity. He holds the right upper extremity in a flexed posture tightly against his side.
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> "I am unable to test the reflexes in the right upper extremity because of the position of the arm."
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> "Observation of [appellant's] right upper extremity throughout today's examination reveals that he does have selective volitional control in the arm. He is able to forward flex, extend, internally and externally rotate the right shoulder. He is able to flex and extend the right elbow. He reveals flexion and extension of the right wrist and he demonstrates active flexion and extension of the right thumb … and he clearly has volitional control of finger flexion in the right hand.… The fingers were in a tightly clenched fist pattern. Attempt at passive range of motion in the right upper extremity elicited significant resistance on the part of [appellant]. Attempts to passively move his shoulder, elbow wrist and hand beyond these limits of motion elicits significant increase in his muscle tone and co-contraction of his antagonist muscles."
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> "No atrophy was appreciated in the right hand."
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> "Based on my review of the provided medical records, the history that [appellant] has provided today and my examination …, it is my impression that the dysfunction and complaints relating to the right upper extremity are not related to the wrist sprain sustained on January 19, 1994."
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> "I believe within a reasonable degree of medical certainty that [appellant's] complaints and dysfunction of the right upper extremity are due to an underlying psychiatric disorder. Reports in the literature exist of patients with psychiatric illness who have severe flexion deformity in the upper extremity…. These problems … are very difficult to treat and fraught with complications. Treatment must be directed at the underlying etiology, which is the psychiatric illness … depression.
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> "[Appellant] currently has severe dysfunction of the right upper extremity. Dr. Weiss has rated the combined total right upper extremity disability at 86 percent. I believe that the disability is at least this high. However, it is also my

> opinion that the disability is not related to the wrist sprain that occurred on January 19, 1994. As requested, I have completed a work capacity evaluation with limitations based on my evaluation today. I do not believe that [appellant] has any permanent impairment or disability in the right upper extremity related to his wrist sprain."

In a work capacity evaluation form, Dr. O'Brien stated, "[Appellant] has been treated for psychiatric illness (depression by his history). Disability in right upper extremity is associated with psychiatric illness."

By decision dated December 6, 2002, the Office denied appellant's claim for a schedule award on the grounds that the weight of the medical evidence, represented by the opinion of Dr. O'Brien, established that he had no permanent impairment causally related to his January 19, 1994 employment-related right wrist sprain.

By decision dated and finalized November 26, 2003, the Office hearing representative affirmed the Office's December 6, 2002 decision.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[4] Section 8107 provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[5] The schedule award provisions of the Act[6] and its implementing federal regulation[7] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) as the uniform standard applicable to all claimants.[8]

[3] 5 U.S.C. §§ 8101-8193.

[4] *Edward W. Spohr*, 54 ECAB ___ (Docket No. 03-1173, issued September 10, 2003); *Nathaniel Milton*, 37 ECAB 712 (1986).

[5] 5 U.S.C. § 8107(a).

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id*.

ANALYSIS

The Office properly determined that there was a conflict in the medical opinion evidence between Drs. Weiss and Maslow as to whether appellant had any permanent impairment of the right upper extremity causally related to his January 19, 1994 right wrist sprain. Section 8123(a) of the Act provides that 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.[9] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[10]

In a report dated October 3, 2001, Dr. O'Brien, a Board-certified orthopedic surgeon, provided a history of appellant's condition and detailed findings on examination. He stated:

> "[Appellant's] appearance is somewhat striking because of the abnormal position of the right upper extremity. He holds the right upper extremity in a flexed posture tightly against his side.… I am unable to test the reflexes in the right upper extremity because of the position of the arm."

Dr. O'Brien stated that appellant clearly had volitional control in his right arm but that attempts at passive range of motion elicited significant resistance by appellant.[11] He found no atrophy of the right arm. Dr. O'Brien opined that appellant had no impairment of the right upper extremity causally related to his January 19, 1994 employment-related right wrist sprain. He indicated that appellant had a significant right upper extremity impairment but it was not related to the wrist sprain sustained on January 19, 2001 but rather to an underlying psychiatric disorder.

The Board finds that the thorough and well-rationalized report of Dr. O'Brien is entitled to special weight and establishes that appellant has no impairment of the right upper extremity causally related to his January 19, 1994 accepted right wrist sprain. Therefore, the Office properly denied his claim for a schedule award.

Appellant asserts on appeal that his right upper extremity impairment is due to a psychiatric condition caused by his employment injury. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury may be covered under the Act.[12] However, the Office has not accepted any psychiatric disorder as causally related to appellant's January 19, 1994 right wrist sprain. The medical evidence of record is not sufficient to establish causal relationship. Although Dr. Stieg, a treating family

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[9] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[10] *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

[11] The Board notes that the Office referral physician, Dr. Maslow, also indicated that appellant resisted attempts at passive range of motion.

[12] *See Arnold A. Alley*, 44 ECAB 912 (1993).

practitioner, and Dr. Romano, a treating psychologist, opined that appellant's depression and right arm disability were causally related to the January 19, 1994 employment injury, they did not provide sufficient rationale in support of their opinion. Neither physician provided any explanation for concluding that the accepted wrist strain caused or contributed to appellant's emotional condition.

Appellant argued that the Office failed to consider whether his employment-related right wrist sprain aggravated his preexisting cerebral palsy and caused a compensable impairment. However, the record shows that Dr. O'Brien noted in the history of his report that appellant had cerebral palsy but did not find any aggravation of this condition contributing to his right arm impairment. He concluded that the right arm impairment was caused by a psychiatric condition and not due to the accepted employment injury.

CONCLUSION

The Board finds that the weight of the medical evidence, represented by the report of Dr. O'Brien, establishes that appellant has no permanent impairment of his right upper extremity causally related to his January 19, 1994 employment-related right wrist strain.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 26, 2003 is affirmed.

Issued: March 17, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member