United States Department of Labor
Employees' Compensation Appeals Board

LARRY D. DAVIS, Appellant	)	
and	)	**Docket No. 04-1882**
	)	**Issued: May 2, 2005**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Indianapolis, IN, Employer	)	

Appearances:
Larry D. Davis, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 22, 2004 appellant filed a timely appeal of a June 23, 2004 merit decision of a hearing representative of the Office of Workers' Compensation Programs that found he did not have more than a 10 percent permanent impairment of his left arm and that he did not have a permanent impairment of his right arm. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment of his left arm and whether he has a permanent impairment of his right arm.

FACTUAL HISTORY

On March 17, 1996 appellant, then a 44-year-old mail handler, filed a claim for compensation for an occupational disease of a pinched nerve and carpal tunnel syndrome. He stated that, after several months of lifting large sacks and boxes of mail, and pulling and pushing

equipment, he was having pain in his arms, neck and both hands. Appellant did not stop work, but was assigned limited duty beginning February 21, 1996.

The Office accepted that appellant sustained an aggravation of bilateral carpal tunnel syndrome and a cervical sprain. It authorized carpal tunnel releases, which were performed on the right wrist on November 20, 1996 and on the left wrist on February 5, 1997 by Dr. James B. Steichen, a Board-certified orthopedic surgeon specializing in hand surgery. In a May 8, 1997 report, Dr. Steichen stated that appellant's hand symptoms had resolved and that he had no permanent impairment.

On July 1, 1997 appellant filed a claim for compensation for an occupational disease, consisting of a cervical herniated disc. In a June 25, 1997 report, Dr. Karen D. Rodman, a Board-certified neurologist, diagnosed a herniated cervical disc with radicular syndrome. The Office accepted that appellant's herniated disc at C5-6 was related to his employment. On April 14, 1999 appellant underwent a cervical discectomy and fusion at C5-6. The Office accepted that this surgery was related to appellant's employment.

On August 17, 1999 appellant filed a claim for compensation for an injury to his left shoulder sustained on June 2, 1997. He stated that he was released from his limited-duty assignment in May 1997 and was reinjured on June 2, 1997 by lifting large sacks and boxes of mail and pulling and pushing equipment. The Office accepted that appellant sustained a left shoulder impingement syndrome and authorized left shoulder surgery. On January 21, 2000 Dr. Robert Baltera, a Board-certified orthopedic surgeon, performed labral debridement, distal clavicle resection and open acromioplasty.

On December 7, 1999 appellant filed a claim for an occupational disease for right shoulder pain. In a March 23, 2000 report, Dr. Baltera stated that x-rays revealed acromioclavicular joint arthritis and a mild secondary impingement syndrome, and that the majority of appellant's symptoms were the result of a degenerative process and not caused, accelerated, precipitated or aggravated by his employment activities. By decision dated October 23, 2000, the Office found that appellant's right shoulder condition was not shown to be causally related to his employment. This decision was affirmed by an Office hearing representative in a July 25, 2001 decision.

On August 30, 2000 Dr. Steichen performed a recurrent right carpal tunnel release and flexor tenosynovectomy, which were authorized by the Office. In a November 28, 2000 report, Dr. Steichen diagnosed recurrent bursitis of the left shoulder secondary to repetitive lifting at his shoulder level, and stated that appellant had a 10 percent impairment of his left arm secondary to the distal clavicle resection. On March 7, 2001 appellant filed a claim for a schedule award. In a February 8, 2001 report, Dr. Steichen stated that, based on loss of grip strength in his dominant right hand (58 pounds versus 73 on the left) and evidence of mild recurrence of median nerve irritation at the wrist area, appellant had a 10 percent impairment of each upper extremity below the elbow.

On March 18, 2001 the Office referred appellant and a statement of accepted facts to Dr. Arthur Lorber, a Board-certified orthopedic surgeon, for a second opinion on whether appellant had residuals of his employment injuries and on his ability to work. In an April 9,

2001 report, Dr. Lorber noted that appellant had full ranges of motion of his shoulders, elbows, wrists and fingers, with complaints of pain on shoulder motion. Appellant had no shoulder or hand atrophy, his grip was 32 on the right and 36 on the left, and he had no sensory loss to light touch in the upper extremities. Dr. Lorber concluded that appellant had no significant clinical evidence of cervical myelopathy or radiculopathy, no significant objective clinical findings for his chronic right shoulder pain, and no clinical evidence to support a diagnosis of cubital tunnel syndrome.

In a July 27, 2001 report, Dr. Rodman stated that appellant had neck pain radiating into his arms, paresthesias of the fingers of his right hand, normal motion of his upper extremities, a positive Tinel's sign of the left wrist and tenderness of the right wrist. Dr. Rodman concluded that appellant had a 15 percent impairment of the whole person. In a November 6, 2001 report, Dr. Rodman stated that appellant had a three percent neck impairment. In a November 15, 2002 report, Dr. Rodman stated that appellant had fibromyalgia-type pain, and that nerve conduction studies on October 2, 2002 were unremarkable except for a mild showing of the left ulnar nerve below the elbow. In a February 7, 2003 report, Dr. Rodman stated that appellant had full ranges of motion of his upper extremities, a positive Tinel's sign of both wrists, and 5/5 strength of the arms. Dr. Rodman stated that she agreed with Dr. Steichen's February 8, 2001 assessment of 10 percent impairment of each upper extremity below the elbow. An Office medical adviser reviewed this report, found the information on permanent impairment of the arms incomplete, and recommended referral to a specialist for an evaluation of appellant's permanent impairment.

On March 17, 2003 the Office referred appellant, the case record and a statement of accepted facts to Dr. Otto Wickstrom, a Board-certified orthopedic surgeon, for an evaluation of the permanent impairment of his arms. In an April 7, 2003 report, Dr. Wickstrom stated that appellant complained of pain in his neck, both shoulders, both elbows, both wrists, hands and fingers. Examination revealed motion for both shoulders of 175 degrees of abduction and elevation, 90 degrees of internal rotation, 45 degrees of external rotation, with no atrophy and no joint laxity. There also was no laxity of the biceps, triceps, forearm or hand muscles, the elbow functioned well with extension to 0 degrees and flexion to 45 degrees, no sensory loss bilaterally, and possibly positive Tinel's and Phalen's signs, which were noted to be subjective. Dr. Wickstrom concluded that appellant had reached maximum medical improvement, and that he found no sensory deficit resulting from a peripheral nerve disorder, no motor deficits secondary to neck, shoulder, or hand problems, and no weakness or loss of power secondary to nerve or nerve root injury. An Office medical adviser reviewed Dr. Wickstrom's report on April 30, 2003 and assigned 0 percent for sensory deficit and for motor deficit, and 10 percent for resection of the distal left clavicle.

By decision dated May 16, 2003, the Office found that appellant had no more than a 10 percent permanent impairment of the left arm and no permanent impairment of the right arm. Appellant requested a hearing, held on February 25, 2004, at which he argued that Dr. Wickstrom did not do grip or pinch strength measurements and that Dr. Steichen's February 8, 2001 report showed a 10 percent impairment of each arm. In response to a request from the Office hearing representative, another Office medical adviser reviewed the medical evidence on June 14, 2004 and stated: "Drs. Wickstrom and Rodman are in general agreement that the claimant has subjective complaints of upper extremity pain but does not reveal objective findings of active neurological deficits such as loss of limb, range of motion, muscle weakness or

muscle atrophy or sensory deficits. Thus I agree with Dr. Wickstrom that the patient has no ratable findings and that no PPI [permanent partial impairment] of either upper extremity should be based on subjective pain findings without supporting objective neurological deficits."

By decision dated June 23, 2004, an Office hearing representative found that appellant did not have more than a 10 percent permanent impairment of his left arm and that he did not have a permanent impairment of his right arm.

LEGAL PRECEDENT

The schedule award provision of the Act[1] and its implementing regulation[2] 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. A schedule award is not payable for the back or for the person as a whole, as the Act and regulations do not provide for such awards[3] and the Act specifically excludes the back from the definition of "organ."[4]

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, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

ANALYSIS

The Board finds that the medical evidence establishes that appellant has a 10 percent permanent impairment of the left arm. This is the percentage reported by his attending physicians, Dr. Rodman, a Board-certified neurologist, and Dr. Steichen, a Board-certified orthopedic surgeon. This is the percentage allowed for a distal clavicle resection by Table 16-37 of the A.M.A., *Guides*, which was the diagnosis based basis of an Office medical adviser's rating. Although Dr. Wickstrom reported some minor limitations of five degrees of external rotation and flexion of the left shoulder, these would amount to one percent each according to Figures 16-40 and 16-46. Table 17-2 provides that impairments from diagnosis based estimates cannot be combined with impairments from loss of motion. There is no evidence that appellant has more than a 10 percent permanent impairment of the left arm.

With regard to the right arm, Dr. Wickstrom stated that appellant had the same losses of shoulder motion as for the left arm. However, the Office has not accepted a right shoulder condition, so these deficits are not considered part of appellant's entitlement to a schedule

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Terry E. Mills*, 47 ECAB 309 (1996).

[4] 5 U.S.C. § 8101.

award.[5] The Office did accept a herniated cervical disc and carpal tunnel syndrome, so any permanent impairment of appellant's right arm related to these conditions would be payable under a schedule award. Dr. Wickstrom reported, as had Dr. Rodman in a February 7, 2003 report, that appellant had full ranges of motion of his wrists and fingers. Dr. Rodman reported 5/5 strength of the arms, and Dr. Wickstrom stated that he found no motor deficits. Dr. Wickstrom, however, did not measure pinch or grip strength, which were the basis of Dr. Steichen's conclusion that appellant had a 10 percent impairment of the right arm. While these are not the preferred method of evaluation under the A.M.A., *Guides*, section 16.8a provides that they can be used if the examiner believes the individual's strength represents an impairing factor that has not been considered adequately by other methods. The case will be remanded to the Office to obtain a clarifying opinion from Dr. Wickstrom whether appellant has an impairment of his right arm due to loss of strength. Dr. Wickstrom should also be asked to clarify his range of elbow flexion, which he listed as 45 degrees. This appears to be an error in his report, as he stated the elbows function well but Table 16-34 indicates normal elbow flexion is to 140 degrees and that 45 degrees of elbow flexion would constitute a 25 percent arm impairment.

CONCLUSION

The Board finds that appellant has no more than a 10 percent permanent impairment of the left arm, and further finds that further development is needed to determine the degree, if any, of right arm impairment.

[5] There is no indication that any reduction in shoulder motion is related to appellant's cervical spine condition.

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2004 decision of the Office of Workers' Compensation Programs is affirmed with regard to the left arm impairment. With regard to the right arm impairment, the case is remanded to the Office for action consistent with this decision of the Board.

Issued: May 2, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member