United States Department of Labor
Employees' Compensation Appeals Board

LAWRENCE E. KELLY, Appellant	)	
and	)	**Docket No. 05-1433**
	)	**Issued: November 17, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Merrifield, VA, Employer	)	

Appearances:
Stephen D. Scavuzzo, 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 June 23, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 28, 2005 in which an Office hearing representative affirmed an earlier decision which denied his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established entitlement to a schedule award for his right upper extremity.

FACTUAL HISTORY

On May 26, 1996 appellant, then a 45-year-old mail handler, filed a traumatic injury claim alleging that on May 24, 1996 his right elbow became weak and popped while he was in the performance of his federal duties. The Office accepted his claim for right elbow tendinitis/bursitis and the subsequent condition of right lateral epicondylitis. Appropriate

compensation was paid. Appellant returned to limited-duty work after a period of disability. He began working for the state of Virginia on or about August 1996.

The record reflects that appellant began treatment with Dr. Hugo A. Davalos, a Board-certified orthopedic surgeon, on June 5, 1996, who initially provided an impression of degenerative disease right elbow and tendinitis right elbow, noting that x-rays of the right elbow revealed degenerative joint disease. He later became concerned about compartment syndrome with possible neurological complications and referred him for an electromyogram (EMG) and nerve conduction velocity (NCV) tests. Appellant underwent a NCV on July 11, 1996 which was suggestive of a mild peripheral neuropathy involving the ulnar nerves. He underwent an EMG on July 17, 1996 which Dr. Katherine L. Maurath indicated revealed a right ulnar nerve compromise distal to the right olecranon groove and the forearm; medial and lateral epicondylitis and possible recurrent subluxation of the radial humeral joint or compartment syndrome. Appellant was noted to have a past medical history significant for diabetes.[1] In a July 18, 1996 report, Dr. Davalos noted that Dr. Maurath diagnosed subluxation of the right elbow and ulnar compression below the elbow. He recommended a magnetic resonance imaging (MRI) scan. In an October 30, 1996 report, Dr. Davalos stated that appellant had injured his right upper extremity while lifting mail sacks on May 24, 1996 and had reinjured his right arm on July 18, 1996 when he was working in the trailer unloading parcel post boxes. According to appellant, the boxes fell onto his right arm. Dr. Davalos opined that the July 18, 1996 incident was an aggravation of the May 24, 1996 work injury.

Approximately one year later, in an August 7, 1997 report, Dr. Davalos noted a positive Tinel's sign along the right ulna and positive Phalen's and Tinel's signs in the wrist and provided an impression of ulnar tunnel syndrome right arm and carpal tunnel syndrome right arm. He opined that those symptoms were related to the May 24, 1996 work injury. An EMG and nerve condition testing were recommended. In a December 22, 1997 report, Dr. Aysegul Soyer, a Board-certified neurologist, opined that an EMG study showed evidence of mild right carpal tunnel syndrome, no evidence of denervation and a mild anonal sensory neuropathy. In a January 8, 1998 report, Dr. Davalos stated that the EMG and NCV tests showed evidence of carpal tunnel syndrome on the right wrist. Surgical options were discussed but appellant did not undergo the proposed surgery.

On April 23, 2003 appellant filed a Form CA-7, claim for compensation for a schedule award. Submitted with his claim was an April 23, 2003 report from Dr. Davalos, who opined that appellant had reached maximum medical improvement and had a nine percent impairment of the right arm. Dr. Davalos noted that current examination findings revealed right carpal tunnel syndrome and ulnar cubital syndrome right elbow and recommended surgical treatment. He advised that appellant's problems began in 1996 when he injured his right elbow lifting mail sacks. Dr. Davalos stated that appellant's workup at the time, which included an EMG and nerve conduction tests, had revealed a right ulnar nerve compromise. He stated that appellant did not respond to conservative treatment and he had declined surgical options in January 1998. In an April 23, 2003 attending physician's report, Dr. Davalos opined with a check mark "yes" that

[1] Dr. Maurath's credentials are not of record.

appellant's right ulnar nerve neuropathy was caused or aggravated by his employment activity of lifting mail sacks.

The Office sent Dr. Davalos's April 23, 2003 reports along with a statement of accepted facts to its Office medical adviser for an opinion on appellant's impairment due to the right elbow injury of May 24, 1996. In an October 8, 2003 report, the Office medical adviser opined that the information provided by Dr. Davalos did not relate to the accepted lateral epicondylitis condition. He found that Dr. Davalos' opinion was based on a right carpal tunnel syndrome and a right ulnar cubital syndrome at the right elbow, which were nerve entrapment syndromes. The Office medical adviser stated that neither condition was related to the accepted condition of lateral epicondylitis or listed as an accepted condition. Accordingly, Dr. Davalos advised that, if those unrelated conditions had not been accepted by the Office, then there was a zero percent impairment for any residuals of a lateral epicondylitis condition.

Based on the Office medical adviser's report, the Office referred appellant, a statement of accepted facts, a series of questions and the record, to Dr. Steven Hughes, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether he had any residuals of the accepted right lateral epicondylitis condition and whether the claim should be expanded to include any other additional conditions. In a December 8, 2003 report, Dr. Hughes noted the history of injury, that appellant had a history of high blood pressure and diabetes and that his symptoms had not changed since the injury. Examination results were provided along with a review of the August 16, 1996 MRI scan study, which noted an effusion involving the posterior aspect of the elbow joint with no evidence of damage to the median nerve. Dr. Hughes diagnosed a nonwork-related right cubital tunnel syndrome and right lateral epicondylitis. He opined that appellant's current conditions were not caused, aggravated or accelerated by the May 24, 1996 work injury and, thus, there was no need to further expand additional conditions in this claim as the nerve symptoms were related to his diabetes and not the 1996 injury. Dr. Hughes further opined that there were no residuals of the 1996 right lateral epicondylitis condition as that condition had resolved four months after the 1996 work injury. Accordingly, he opined that the medical evidence did not support any permanent impairment.

By decision dated January 20, 2004, the Office denied appellant's claim for a schedule award on the basis that the medical evidence of record was insufficient to support that he had any continuing residuals of his accepted condition.

In a February 13, 2004 letter, appellant's attorney requested an oral hearing. Appellant later changed his request to a request for a review of the written record.

In a December 23, 2004 letter, appellant's attorney argued that Dr. Davalos had been appellant's treating physician since the work injury and clearly described the condition on which he applied an impairment rating as being a "residual" of the original injury. Copies of his CA-1 form and the Office's July 31, 1996 acceptance were submitted along with copies of Dr. Davalos's treatment notes from June through July 1996, 1996 prescription notes and June 3 and September 18, 1996 duty status reports in which the conditions of right elbow tendinitis and right ulnar neuropathy were diagnosed. In his duty status reports, Dr. Davalos opined that the conditions of right elbow tendinitis and right ulnar neuropathy were due to the May 24, 1996 employment injury.

By decision dated March 28, 2005, an Office hearing representative affirmed the Office's January 20, 2004 decision, finding that the weight of the medical opinion evidence rested with the second opinion physician, Dr. Hughes.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence.[3]

The schedule award provision of the Act[4] and its implementing regulation[5] sets 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. 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 Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating scheduled losses. As of February 1, 2001, all new schedule awards are based on the fifth edition of the A.M.A., *Guides*.[6]

ANALYSIS

The Office accepted that appellant sustained right elbow tendinitis/bursitis and right lateral epicondylitis as a result of his May 24, 1996 work injury. It is well established that in calculating a schedule award for a member of the body that sustained an employment-related impairment, preexisting impairments of that member must be included.[7] In this case, appellant has argued that his conditions of right carpal tunnel syndrome and right ulnar cubital syndrome arose out of his employment injury and should be included in the calculation of his schedule award. The Office, however, denied appellant's claim for a schedule award on the grounds that the medical opinion evidence did not support any impairment or residuals from his accepted work injury. This was based on the Office medical adviser's opinion that Dr. Davalos's April 23, 2003 impairment rating was based on conditions not accepted by the Office and Dr. Hughes December 8, 2003 opinion that appellant had no remaining residuals or impairment of his accepted right lateral epicondylitis condition.

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Rose V. Ford*, 55 ECAB ___ (Docket No. 04-15, issued April 6, 2004); *see* FECA Bulletin 01-05 (issued January 29, 2001).

[7] *See Dale Larson*, 41 ECAB 481 (1990); *Pedro M. De Leon, Jr.*, 35 ECAB 487 (1983).

Dr. Davalos' impairment rating of April 23, 2003 includes a right cubital tunnel syndrome and a right cubital syndrome which are conditions not accepted by the Office. The Board finds that the weight of the medical evidence rests with Dr. Hughes, who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant's accepted work injury had resolved within four months of the 1996 work injury. He further opined that his current conditions of nonoccupational right cubital tunnel syndrome and the current right lateral epicondylitis condition were not caused, precipitated, aggravated or accelerated by the 1996 work injury. Dr. Hughes noted that appellant had reported a history of high blood pressure and diabetes and opined that his nerve symptoms were related to his underlying diabetes and that there was no indication of any permanent impairment that resulted from the 1996 injury. Accordingly, the Board finds that the weight of the medical opinion evidence rests with Dr. Hughes, who opined that appellant has no remaining residuals or impairment related to the 1996 work injury.

As there is no evidence of any work-related impairment, then any impairment due to preexisting conditions, such as appellant's right carpal tunnel syndrome and right ulnar tunnel syndrome can not be considered.[8] Accordingly, the Office properly denied appellant's claim for a schedule award.

For those conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship.[9] Thus, appellant bears the burden to prove his right carpal tunnel syndrome and right ulnar tunnel syndrome are causally related to his federal employment.

Although Dr. Davalos had advised in his April 23, 2003 report that appellant's 1996 workup had revealed a right ulnar nerve compromise and his treatment reports reflect that he had evidence of ulnar tunnel syndrome and carpal tunnel syndrome in his right arm, Dr. Davalos's reports are of decreased probative value because they fail to offer a well-rationalized medical opinion explaining how or why appellant's current conditions of right carpel tunnel syndrome and ulnar cubital syndrome arose out of or contributed to his employment exposure. In both of his attending physician reports of 1996 and April 23, 2003, Dr. Davalos diagnosed right ulnar nerve neuropathy and noted with a check mark "yes" that appellant's condition was caused or aggravated by his employment duties, specifically the 1996 incident. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[10] Dr. Davalos' June 3 and

[8] *Id.*

[9] *See Jaja K. Asaramo*, 55 ECAB ___ (Docket No. 03-1327, issued January 5, 2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury); *see also Alice J. Tysinger*, 51 ECAB 638 (2000).

[10] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

September 18, 1996 duty status reports also did not provide any medical reasoning to support his opinion that the conditions of right ulnar neuropathy and right carpal tunnel conditions were due to the May 24, 1996 employment injury.

Therefore, Dr. Davalos' reports are insufficient to meet appellant's burden of proof that his current nerve entrapment syndromes and any resulting impairment, are related to the May 24, 1996 employment injury or to any other employment factors. Accordingly, he has not discharged his burden of proof to establish that any conditions not accepted by the Office are causally related to his work injury of May 24, 1996 or factors of his federal employment.

CONCLUSION

The Board finds that since there is no evidence of any work-related impairment, the Office properly denied appellant's claim for a schedule award. Additionally, he has not meet his burden of proof to establish that his current right elbow conditions were caused or aggravated by the accepted work injury or factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 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