

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

P.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Wilmington, DE, Employer**

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**Docket No. 06-920
Issued: August 25, 2006**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 13, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 31, 2005 merit decision denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has an impairment of his upper extremities which entitles him to schedule award compensation.

FACTUAL HISTORY

This is the second appeal in this case. The Board issued a decision on July 29, 2002 affirming the termination of appellant's compensation effective January 21, 1999 and remanding the case to the Office for further development.¹ It determined that the Office properly relied on an August 14, 1998 report of Dr. Peter F. Townsend, an attending Board-certified orthopedic surgeon,

¹ Docket No. 02-37 (issued July 29, 2002).

to terminate appellant's compensation effective January 21, 1999 on the grounds that he had no residuals of his employment-related bilateral carpal tunnel syndrome after that date.² The Board further found that a February 6, 2001 report of Dr. Townsend, which referenced new diagnostic testing, required additional evaluation of whether appellant had an employment-related carpal tunnel or right shoulder condition.³ The Board also directed the Office to consider whether he had any impairment of his upper extremities which entitled him to schedule award compensation.⁴ The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

In a decision dated November 19, 2002, the Office denied appellant's claim on the grounds that he did not have residuals of an employment-related upper extremity condition and that he was not entitled to schedule award compensation. It determined that the opinion of Dr. Townsend did not show that he had an employment-related upper extremity condition, particularly since Dr. Townsend was not aware that appellant had worked for a private employer as a bartender. The Office further found that his opinion that appellant had a one percent impairment of the right upper extremity did not support entitlement to schedule award compensation because Dr. Townsend did not show that the impairment was related to an employment-related condition.

Appellant requested a hearing before an Office hearing representative which was held on July 20, 2005. Appellant, through his attorney, indicated that he was not contesting the Office's determination that he had not established disability due to a new employment-related carpal tunnel or right shoulder condition. Appellant alleged that a December 6, 1999 report of Dr. Ronald J. Potash, an attending Board-certified orthopedic surgeon, showed that he had a 22

² On March 10, 1998 appellant, then a 54-year-old letter carrier, filed a claim (file number 03-233703) alleging that he sustained bilateral carpal tunnel due to the repetitive duties of his job; he asserted that he first became aware of the injury on December 10, 1997. On April 29, 1998 the Office accepted that appellant sustained bilateral carpal tunnel syndrome. On April 30, 1998 he underwent right carpal tunnel release surgery and on June 4, 1998 appellant underwent left carpal tunnel syndrome surgery. Appellant stopped work on April 30, 1998 and was terminated from the employing establishment effective May 3, 1998. He later claimed that he was entitled to schedule award compensation due to his employment-related upper extremity condition.

³ Dr. Townsend indicated that recent electromyogram (EMG) and nerve conduction testing showed "mild residual axonal changes from [appellant's] previous carpal tunnel condition" and significant ulnar nerve entrapment not previously noted on any prior diagnostic testing. On October 27, 1998 he filed a claim for recurrence of disability alleging that he had upper extremity and right shoulder conditions caused by job duties such as carrying a mailbag for extended periods. The Office interpreted this as a claim for a new occupational condition and created a new claim under file number 03-247136.

⁴ In a February 2, 2001 report, Dr. Townsend stated, "All of [appellant's] subjective complaints are consistent with ulnar nerve entrapment which was confirmed by his recent EMG and are not a result of work activities. However, the EMG and nerve conduction studies also showed mild residual axonal damage regarding his initial carpal tunnel syndrome. Therefore, according to the [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001)] on page 495, utilizing option number two under the heading 'carpal tunnel syndrome,' [appellant] who does not subjectively complain of any specific carpal tunnel related issues, but does have residual changes on his EMG testing, therefore, demonstrates an estimated one percent impairment to his right upper extremity."

percent impairment of his right upper extremity and a 20 percent impairment of his left arm.⁵ He requested that the Office conduct additional development of his schedule award claim.

By decision dated and finalized October 31, 2005, the Office hearing representative affirmed the Office's November 19, 2002 decision. He indicated that appellant had not contested the Office's finding that he had no disability due to a new employment-related carpal tunnel or right shoulder condition and stated that this matter was not the subject of her decision. Regarding appellant's entitlement to schedule award compensation, the Office hearing representative found that the opinion of Dr. Potash did not show that appellant had impairment of the upper extremities which was related to employment factors and, therefore, he was not entitled to a schedule award.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act⁶ 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.⁷

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

⁵ In the December 6, 1999 report, which was added to the record around the time of its production, Dr. Potash stated that appellant worked as a letter carrier from 1991 to 1998 and then worked for a private employer as a bartender, a job which he reported had exacerbated his upper extremity pain. He indicated that appellant reported pain, numbness and tingling in his wrists and hands, greater on the right and noted that examination revealed negative Tinel's, Phalen's and carpal compression tests on both sides. Dr. Potash stated that range of motion testing of the right wrist showed dorsiflexion of 65 degrees, palmar flexion of 60 degrees, radial deviation of 20 degrees and ulnar deviation of 30 degrees and that range of motion testing of the left wrist showed dorsiflexion of 60 degrees, palmar flexion of 45 degrees, radial deviation of 20 degrees and ulnar deviation of 30 degrees. He also reported the findings of grip strength testing and range of motion testing of the fingers, diagnosed bilateral carpal tunnel syndrome due to chronic repetitive stress and status post bilateral carpal tunnel release and stated, "The work-related injury of December 10, 1997 was the competent producing factor for the patient's subjective and objective findings of today." Dr. Potash indicated that appellant had a 2 percent impairment due to limited flexion of the right wrist per Figure 26 on page 36 of the fourth edition of the A.M.A., *Guides* and a 20 percent impairment due to entrapment of the median nerve at the right wrist per Table 16 on page 57 of the of the fourth edition of the A.M.A., *Guides*. He indicated that combining these figures yielded a total impairment of his right upper extremity of 22 percent. Dr. Potash found that appellant had a total impairment of his left upper extremity of 20 percent due to median nerve entrapment at the left wrist per Table 16 on page 57 of the fourth edition of the A.M.A., *Guides*. In a report dated April 21, 2000, an Office medical adviser found that his current upper extremity condition was due to nonwork factors.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 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 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.

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.⁸

The schedule award provision of the Act⁹ and its implementing regulation¹⁰ 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. 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, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹¹

ANALYSIS

The Office accepted that in April 1998 appellant sustained bilateral carpal tunnel syndrome due to the repetitive duties of his letter carrier position.¹² He stopped working for the employing establishment on April 30, 1998 and then claimed that he was entitled to schedule award compensation due to his accepted employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that he has an impairment of his upper extremities which entitles him to schedule award compensation. Appellant submitted a December 6, 1999 report in which Dr. Potash, an attending Board-certified orthopedic surgeon, concluded that he had a 22 percent impairment of his right upper extremity and a 20 percent impairment of his left upper extremity. This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Potash did not provide a well-rationalized opinion that appellant had an impairment due to his employment injury which was accepted in April 1998, bilateral carpal tunnel syndrome.¹³

Dr. Potash reported his findings on examination and generally indicated that the accepted employment injury was “the competent producing factor for [appellant’s] subjective and objective findings of today.” He stated that appellant had a 2 percent impairment due to limited

⁸ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁹ 5 U.S.C. § 8107.

¹⁰ 20 C.F.R. § 10.404 (1999).

¹¹ *Id.*

¹² The Board affirmed the Office’s determination that appellant had no disability or other residuals of his accepted employment injury after January 21, 1999. The matter of whether appellant had any continuing residuals of his accepted employment injury is not currently before the Board.

¹³ 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). See also *supra* notes 7 and 8 and accompanying text.

flexion of the right wrist that, when combined with a 20 percent impairment due to entrapment of the median nerve at the right wrist, equaled a total impairment of his right upper extremity of 22 percent. Dr. Potash also noted that appellant had a total impairment of his left upper extremity of 20 percent due to median nerve entrapment at the left wrist.

Although Dr. Potash suggested that appellant's impairment was related to the bilateral carpal tunnel syndrome accepted in April 1998, he did not provide a clear opinion to this effect. Moreover, he did not provide medical rationale supporting such a causal relationship. Medical rationale regarding the cause of appellant's claimed impairment is particularly necessary in the present case for several reasons. Dr. Potash indicated that examination revealed negative Tinel's, Phalen's and carpal compression tests on both sides, but he did not explain how, given these results, appellant's impairment could have been due to his accepted carpal tunnel syndrome. In addition, appellant stopped working for the employing establishment in May 1998 and then started working for a private employer as a bartender. Dr. Potash did not address this nonfederal employment or why it would not be solely responsible for his continuing problems.¹⁴

Appellant also submitted a February 2, 2001 report in which Dr. Townsend, an attending Board-certified orthopedic surgeon, determined that he had a one percent impairment rating of his right upper extremity due to carpal tunnel syndrome under the fifth edition of the A.M.A., *Guides*. This report is of limited probative value on the relevant issue of the present case in that it contains an opinion on the cause of his medical condition which is equivocal because it provides conflicting views on the nature and cause of his upper extremity condition.¹⁵ On the one hand, Dr. Townsend suggested that appellant's continuing condition was nonwork related when he stated that all of his "subjective complaints are consistent with ulnar nerve entrapment which was confirmed by his recent EMG and are not a result of work activities." Dr. Townsend further stated that "EMG and nerve conduction studies also showed mild residual axonal damage regarding his initial carpal tunnel syndrome" but he did not provide any discussion explaining his suggestion that carpal tunnel syndrome might have contributed to his continuing problems. He did not provide a well-rationalized opinion that appellant's claimed permanent impairment was due to his accepted employment injury.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has an impairment of his upper extremities which entitles him to schedule award compensation.

¹⁴ Although Dr. Potash mentioned appellant's bartending job, he did not provide any notable discussion of its duties and, therefore, his report is not based on a complete and accurate factual history. *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history). As noted above, the Board had already affirmed the Office's determination that appellant did not have residuals of his accepted employment injury after January 21, 1999.

¹⁵ *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 31, 2005 decision is affirmed.

Issued: August 25, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board