

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

C.W., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Hopkinsville, KY, Employer)

**Docket No. 07-2340
Issued: June 6, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 17, 2007 appellant filed a timely appeal from the July 16, 2007 decision of the Office of Workers' Compensation Programs finding that he was not entitled to 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 reached maximum medical improvement.

FACTUAL HISTORY

This is the second appeal in this case. By decision dated May 31, 2007, the Board set aside the Office's August 8, 2006 decision granting appellant a schedule award for eight percent

impairment of his left upper extremity and remanded the case for further medical development.¹ The Board found that the case was not in posture for a decision because the opinion of the Office medical adviser was not sufficiently rationalized for the Board to verify his impairment calculation. The Board noted that the record was unclear as to how the Office medical adviser determined the date of maximum medical improvement and directed the Office to explain the determination of the date of maximum medical improvement. The history of the case, as set forth in the prior Board decision, is hereby incorporated by reference.

On June 7, 2007 the Office referred appellant for a second opinion evaluation to determine the extent and degree of his left upper extremity impairment for purposes of a schedule award.

On June 27, 2007 Dr. John Lamb, a Board-certified orthopedic surgeon, examined appellant and evaluated his condition. He noted that appellant's primary complaint was numbness in his left arm. Appellant stated that he had numbness from the medial side of his elbow, down the forearm and into the fourth and fifth fingers. He also indicated that he had numbness and dysesthesia along the ulnar border of the forearm and hand. Although appellant noticed no general weakness in his hands, sometimes his left hand lost strength suddenly, causing him to drop whatever he was carrying. On examination, Dr. Lamb found a well-healed surgical scar along the medial side of the distal arm, elbow and proximal forearm. He found no apparent muscle atrophy in the left arm. Dr. Lamb stated that the motor function of the left arm was normal compared to the right arm. He found no apparent difference in skin moisture or temperature.

Dr. Lamb reviewed appellant's medical records, which confirmed that appellant was injured in February 2000 and that he underwent a transposition of his ulnar nerve in September 2000. Following his surgery, he had a period of immobility and then physical therapy. Appellant stabilized in the first part of 2001. In February 2006, appellant reported decreased sensation on the ulnar side of his left elbow, forearm and hand. There was no significant difference in elbow function or in hand-muscle strength. Dr. Lamb found no need for any additional diagnostic testing. He stated that an electromyogram was not necessary because appellant's muscle strength was symmetrical between his two hands.

Dr. Lamb diagnosed a history of a treated ulnar neuropathy and nerve entrapment in the left elbow and residual numbness in the ulnar distribution of the left forearm and hand. Although the medical records did not expressly identify the date appellant was released from treatment, he opined that it was reasonable to extrapolate that maximum medical improvement was reached on approximately January 1, 2001. Dr. Lamb proceeded to use the American Medical Association, *Guides to Evaluation of Permanent Impairment* (5th ed. 2001) to find an impairment rating based on a deficit of 26 to 60 percent in the sensory function of the ulnar nerve below the forearm. He found that appellant had a four percent impairment of his left upper extremity because of the persistent numbness in the ulnar nerve distribution. Dr. Lamb stated

¹ Docket No. 06-2097 (issued May 31, 2007). On February 2, 2000 appellant, then a 37-year-old letter carrier, filed a claim for a traumatic injury, alleging that he experienced numbness in his left hand and pain from his hand to his elbow after picking up a parcel that day. The Office accepted this claim for left ulnar neuropathy and brachial neuritis.

that it would not be appropriate to provide a separate rating for any of appellant's fingers because the impairment was based in the left elbow and the impairment rating he had provided properly considered the impairment.

By revised decision dated July 16, 2007, the Office denied appellant's claim for an increased schedule award.² After reporting Dr. Lamb's medical findings, including his impairment rating, the Office found that the medical evidence supported the conclusion that appellant's condition had not yet reached a fixed and permanent state. The Office stated that appellant was not entitled to a schedule award because he had not met the requirement of reaching maximum medical improvement.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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 should be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.⁵ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁶

The Office procedures provide that, to support a schedule award, a claimant's file must contain competent medical evidence which shows "that the impairment has reached a permanent and fixed state and indicates the date on which this occurred ('date of maximum medical improvement' or DMI)."⁷ It is a well-settled rule that maximum medical improvement arises at the point at which the injury has stabilized and will not improve further. This determination is factual in nature and depends primarily on the medical evidence.⁸

² The Board notes that the record contains two full opinions dated July 16, 2007. Though there is no explanatory memorandum, the Board presumes that the decision marked as "REVISION" was the one mailed to appellant. The other opinion denies appellant's claims on the grounds that the medical evidence established that he did not have an impairment greater than eight percent of his upper left extremity.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ 20 C.F.R. § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6b(1) (August 2002).

⁸ *Peter C. Belkind*, 56 ECAB 580 (2005).

ANALYSIS

The Office found that appellant's condition had not yet reached a fixed and permanent state. The issue to be determined is whether the medical evidence of record established that appellant has reached maximum medical improvement.

Following the Board's remand of this case to determine the extent of appellant's permanent left upper extremity impairment and the date of his maximum medical improvement, the Office referred appellant to Dr. Lamb, a Board-certified orthopedic surgeon. On June 27, 2007 after examining appellant and reviewing his medical records, Dr. Lamb diagnosed treated left elbow ulnar neuropathy and nerve entrapment, with residual numbness in the ulnar distribution of the left forearm and hand. Based on appellant's persistent numbness, he found a sensory deficit of the ulnar nerve below the forearm that resulted in a four percent impairment of his left upper extremity. Dr. Lamb stated that, although the medical records did not explicitly state the date of appellant's discharge from treatment, it was reasonable to extrapolate that he reached maximum medical improvement on approximately January 1, 2001.

Despite these findings, the Office denied appellant's claim for a schedule award on the grounds that he had not yet reached maximum medical improvement. The Office provided no rationale for its decision beyond stating that its findings were based on Dr. Lamb's opinion. However, given that Dr. Lamb found that appellant had reached maximum medical improvement, the Board finds that the July 16, 2007 decision of the Office is therefore not supported by the medical evidence.

Considering Dr. Lamb's finding that appellant had reached maximum medical improvement and following any necessary further development, the Office should issue a *de novo* decision determining whether appellant has reached maximum medical improvement and, if so, to whether he is entitled to a schedule award for any permanent impairment to his left upper extremity.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 16, 2007 is set aside and the case is remanded for action consistent with this decision.

Issued: June 6, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board