

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

R.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oklahoma City, OK, Employer**

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**Docket No. 08-374
Issued: September 24, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 9, 2007 regarding 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.

ISSUES

The issues are: (1) whether appellant has more than a 15 percent permanent impairment to his left upper extremity as a result of his employment injury; and (2) whether appellant has established a neck condition as causally related to his employment injury.

FACTUAL HISTORY

Appellant filed an occupational disease claim (Form CA-2) on September 30, 1987 alleging that he sustained a left shoulder injury causally related to factors of his federal employment as a letter carrier. The Office accepted the claim for sprain of the left shoulder

acromioclavicular (AC) joint. Appellant stopped working in 1998 and received compensation based on wage-earning capacity as a computer operator.

By decision dated June 30, 1989, appellant received a schedule award for a 15 percent permanent impairment to his left upper extremity. The period of the award was 48.60 weeks from March 1, 1989.

On September 22, 2005 appellant underwent a left shoulder arthroscopic subacromial decompression surgery. On March 2, 2006 he filed a claim for an additional schedule award. The attending orthopedic surgeon, Dr. Daniel Jones, provided results on examination in a report dated April 11, 2006. He reported left shoulder flexion of 170 degrees, 40 degrees extension, 80 degrees external and internal rotation, 40 degrees adduction and 170 degrees abduction. Dr. Jones stated strength was “4+/5” with internal and external rotation. He opined that appellant had a three percent permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.).

The Office referred the medical evidence to an Office medical adviser for review. In a report dated June 20, 2006, the medical adviser opined that appellant had a 12 percent permanent impairment to the left arm. The medical adviser found that 170 degrees of flexion was a 1 percent arm impairment, as was 40 degrees of extension, resulting in a 2 percent impairment for loss of range of motion. In addition, the medical adviser identified Table 16-27 of the A.M.A., *Guides*, and found appellant had 10 percent impairment for a distal clavicle resection.

By decision dated July 11, 2006, the Office determined that appellant was not entitled to an additional schedule award. It noted that he had previously been awarded 15 percent and the current medical evidence established only a 12 percent left arm permanent impairment.

Appellant requested an oral hearing before an Office hearing representative, which was held on May 23, 2007. The record contains medical reports from Dr. Sean O’Brien, an osteopath, diagnosing cervical radiculopathy. In a May 1, 2007 report, Dr. O’Brien noted appellant had sustained a work injury in September 1987 and “relates no other cause of injury to his neck. He currently has cervical pathology to his effected extremity.”

In a decision dated August 9, 2007, the hearing representative affirmed the July 11, 2006 decision. The hearing representative found the probative medical evidence did not establish more than a 15 percent left upper extremity permanent impairment. With respect to cervical radiculopathy, the hearing representative found the medical evidence insufficient to establish the condition as employment related.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees’ Compensation Act 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.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.²

ANALYSIS -- ISSUE 1

The Office issued a schedule award on June 13, 1989 for a 15 percent permanent impairment to the left arm. The issue, therefore, is whether the current medical evidence of record establishes more than a 15 percent left arm permanent impairment causally related to the accepted employment injury. Appellant submitted an April 11, 2006 report from Dr. Jones, who opined that appellant had a three percent left arm impairment under the A.M.A., *Guides*. Dr. Jones did not refer to any specific tables or explain how he calculated the impairment.

An Office medical adviser reviewed the evidence and the examination findings by Dr. Jones. Pursuant to Figure 16-40, 170 degrees of flexion is a 1 percent impairment and 40 degrees of extension is also a 1 percent impairment.³ The reported loss of range of motion for internal and external rotation (Figure 16-46) and adduction/abduction (Figure 16-43) do not result in a ratable impairment.⁴ The medical adviser also reported a 10 percent impairment under Table 16-27, which provides for a 10 percent impairment due to resection arthroplasty of the distal clavicle.⁵

The only probative medical evidence regarding the degree of left arm permanent impairment is the June 20, 2006 report from the Office medical adviser, who identified the appropriate figures and tables of the A.M.A., *Guides* utilized in calculating the degree of permanent impairment. Since the Office medical adviser's report found a 12 percent left arm permanent impairment, which is less than the 15 percent received on June 30, 1989, appellant has not established he is entitled to an additional schedule award.⁶

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

² A. *George Lampo*, 45 ECAB 441 (1994).

³ A.M.A., *Guides* 476, Figure 16-40.

⁴ *Id.* at 479, Figure 16-46, and 477, Figure 16-43.

⁵ *Id.* at 506, Table 16-27.

⁶ On appeal, appellant indicated he was submitting additional medical evidence. The Board's review of a case is limited to the evidence in the case record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Act⁷ has the burden of establishing the essential elements of his or her claim, including that any specific condition for which compensation is claimed is causally related to the employment injury.⁸ In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, 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 activities.⁹

ANALYSIS -- ISSUE 2

The accepted condition in this case was a left AC joint sprain. The hearing representative addressed the issue of whether appellant had established a neck condition as causally related to the employment injury. Appellant submitted reports from Dr. O'Brien diagnosing a cervical radiculopathy. On the issue of causal relationship with employment, Dr. O'Brien noted in a May 1, 2007 report that appellant had a "work injury" in 1987 and stated that appellant did not describe another cause of injury. He did not provide a complete background describing the nature of the employment injury, nor did he discuss a motor vehicle accident in 2000. Dr. O'Brien did not provide a rationalized medical opinion, based on a complete factual and medical history, on causal relationship between the diagnosed cervical radiculopathy and factors of appellant's federal employment. It is appellant's burden of proof to establish the diagnosed condition as employment related and appellant did not meet his burden of proof in this case.

CONCLUSION

The evidence did not establish more than a 15 percent permanent impairment to the left upper extremity. Appellant did not submit sufficient evidence to establish a cervical or other diagnosed condition as causally related to the employment injury.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *Gary L. Fowler*, 45 ECAB 365 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 9, 2007 is affirmed.

Issued: September 24, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board