United States Department of Labor
Employees' Compensation Appeals Board

H.B., Appellant	)	
and	)	**Docket No. 08-2156**
	)	**Issued: September 25, 2009**
DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA, Employer	)	

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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 31, 2008 appellant, through his attorney, filed a timely appeal of the November 27, 2007 and May 8, 2008 merit decisions of the Office of Workers' Compensation Programs and Office hearing representative, respectively, denying 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 is entitled to a schedule award for his left upper extremity resulting from his August 10, 1982 employment injury.

FACTUAL HISTORY

On August 10, 1982 appellant, then a 28-year-old store worker, sustained a left forearm injury on that date as a result of striking it on a bin while stocking a shelf. On August 10, 1982 he underwent open reduction and internal fixation of a left radius fracture which was performed

by Dr. Marc S. Zimmerman, a Board-certified orthopedic surgeon. Appellant returned to light-duty work on November 4, 1982. The Office accepted his claim for fracture of the left radius mid-shaft.

By letter dated May 7, 2002, appellant, through his attorney, filed a claim for a schedule award. A January 17, 2002 medical report of Dr. Nicholas P. Diamond, an attending Board-certified orthopedic surgeon, stated that appellant's left forearm scar measured 13 centimeters (cm) with atrophied muscles. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), he determined that appellant sustained a 20 percent impairment for grip strength deficit and a 3 percent impairment for pain, resulting in a 33 percent impairment of the left upper extremity. Dr. Diamond opined that appellant reached maximum medical improvement on January 17, 2002.

On December 3, 2002 Dr. Michael F. Quinlan, an Office medical adviser, reviewed appellant's medical records. He recommended a second opinion medical examination to determine the extent of appellant's left upper extremity impairment. Although Dr. Diamond noted muscle atrophy, he failed to provide an impairment rating for this condition. He related that an impairment rating for atrophy would preclude any impairment rating for loss of grip strength based on page 508 of the A.M.A., *Guides*. Dr. Quinlan stated that Dr. Diamond did not properly make an impairment rating for the left upper extremity according to the A.M.A., *Guides*.

By letter dated December 17, 2002, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, for a second opinion medical examination.

In a February 20, 2003 report, Dr. Salem opined that appellant did not sustain any permanent impairment of the left forearm causally related to the August 10, 1982 employment injury. On physical examination, he reported full range of motion of the shoulders, elbows, wrists and fingers. On x-ray examination, Dr. Salem reported a completely and solidly healed left forearm.

On July 13, 2004 the Office determined that a conflict in medical opinion arose between Drs. Diamond and Salem as to the extent of permanent impairment to appellant's left arm. It referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Richard G. Schmidt, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a January 12, 2005 report, Dr. Schmidt reviewed a history of appellant's August 10, 1982 employment injury and medical treatment. He indicated that, following the employment injury, appellant ultimately returned to full-time work as a heavy-duty equipment operator. On physical examination, Dr. Schmidt reported a nontender neck with full range of motion and symmetrical alignment of the shoulders, elbows, wrists and fingers. A nontender six-inch incision over the left forearm area corresponded to the prior open reduction and internal fixation surgery. On neurological examination of the upper extremities, Dr. Schmidt reported intact sensation in all dermatomes. All deep tendon reflexes were plus 2 and symmetric and motor

strength was plus 5 throughout. Dr. Schmidt reported full range of motion of the shoulders. There was also full and symmetrical range of motion of the wrists and fingers bilaterally. On neurological examination of the left forearm, Dr. Schmidt found it was intact, including all parameters of sensation, motor strength and reflexes. There was no numbness of the left hand. Both elbows demonstrated full and symmetrical flexion and complete extension. There was symmetrical pronation of both forearms. Dr. Schmidt reported 75 degrees of supination of the right forearm and 60 degrees of supination of the left forearm. Supination was very minimally decreased on the left but there was no functional significance. Appellant had powerful grip strength bilaterally on finger squeeze. There was no atrophy in the upper extremities.

Dr. Schmidt related that appellant was status post expert open reduction and internal fixation of the left radius. He opined that his clinical examination was within normal limits with the exception of a minimal decrease of supination in the left forearm. Dr. Schmidt further opined that no work restrictions related to appellant's accepted employment-related left forearm fracture were required. He concluded that appellant had recovered from his employment-related injury and there was no need for further diagnostic tests or treatment.

By letter dated July 7, 2005, the Office requested that Dr. Schmidt provide an impairment rating for appellant's left upper extremity based on the fifth edition of the A.M.A., *Guides*.

In a supplemental report dated July 25, 2005, Dr. Schmidt opined that appellant had no impairment of the left upper extremity based on his examination.

On August 3, 2005 an Office medical adviser reviewed appellant's case record. He agreed with Dr. Schmidt's finding that appellant had no impairment of the left upper extremity. The Office medical adviser stated that appellant had full range of motion, normal sensation and strength, no pain or atrophy and he was able to perform a heavy-duty job without harm.

By decision dated November 27, 2007, the Office denied appellant's claim for a schedule award. The medical evidence established that he did not sustain any permanent impairment of the left upper extremity.

By letter dated November 30, 2007, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

In a May 8, 2008 decision, an Office hearing representative affirmed the November 27, 2007 decision. He accorded special weight to Dr. Schmidt's medical opinion as an impartial medical specialist in finding that appellant did not sustain any impairment of the left upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] set forth the number of weeks of compensation to be paid for

[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.404.

permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[3] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[4]

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[5]

ANALYSIS

The Office accepted appellant's claim for fracture of the left radius mid-shaft for which he underwent surgery in 1982. Appellant contended that he was entitled to a schedule award for permanent impairment to his left arm. The Board, however, finds that he has not established that he has sustained any permanent impairment to his left arm due to his accepted fracture of the left radius mid-shaft.

A conflict in the medical opinion evidence arose between Dr. Diamond, an attending physician, and Dr. Salem, an Office referral physician, as to the extent of permanent impairment of appellant's left upper extremity. Dr. Diamond opined that appellant sustained a 33 percent impairment of the left upper extremity. Dr. Salem opined that appellant did not sustain any impairment of the left upper extremity primarily based on loss of grip strength.

The Office properly referred appellant to Dr. Schmidt as the impartial medical specialist. In a January 12, 2005 report, Dr. Schmidt reviewed a history of appellant's August 10, 1982 employment injury and medical treatment. He noted that appellant had returned to full-time work as a heavy-duty equipment operator. Dr. Schmidt reported normal findings on physical examination. He found a nontender neck with full range of motion and symmetrical alignment of the shoulders, elbows, wrists and fingers. Dr. Schmidt also found a nontender six-inch incision over the left forearm area corresponding to the prior open reduction and internal fixation surgery. On neurological examination, he reported essentially normal findings, which included intact sensation in all dermatomes and full range of motion of the shoulders. Dr. Schmidt further reported that all deep tendon reflexes were plus two and symmetric and motor strength was plus five throughout. He stated that appellant's wrists and fingers demonstrated full and symmetrical range of motion bilaterally. Dr. Schmidt found an intact left forearm, including all parameters of sensation, motor strength and reflexes. He found no numbness of the left hand. Dr. Schmidt related that both elbows demonstrated full and symmetrical flexion and complete extension. He determined that appellant had symmetrical pronation of both forearms. Dr. Schmidt reported 75

[3] 5 U.S.C. § 8107(c)(19).

[4] 20 C.F.R. § 10.404.

[5] *Gloria J. Godfrey*, 52 ECAB 486 (2001).

degrees of supination of the right forearm and 60 degrees of supination of the left forearm. He stated that supination was very minimally decreased on the left but there was no functional significance. Dr. Schmidt related that appellant had powerful grip strength bilaterally on finger squeeze and there was no atrophy of the upper extremities.

Dr. Schmidt reported that appellant was status post expert open reduction and internal fixation of the left radius. He opined that his clinical examination was within normal limits with the exception of a minimal decrease of supination in the left forearm, which did not cause any impairment. Dr. Schmidt further opined that appellant did not have any work restrictions related to his accepted left forearm fracture. He concluded that appellant had recovered from his employment-related injury and there was no need for further diagnostic tests or treatment. Dr. Schmidt found that appellant had no impairment of the left upper extremity.

The Board finds that Dr. Schmidt's opinion is entitled to the special weight accorded an impartial medical specialist and constitutes the weight of the medical evidence.[6] Dr. Schmidt provided examination findings and sufficient medical rationale in determining that appellant does not have any left upper extremity impairment. The Office medical adviser agreed with Dr. Schmidt's finding that appellant sustained a zero percent impairment of the left upper extremity.

On appeal, appellant's attorney contended that Dr. Schmidt failed to reference the A.M.A., *Guides* in reaching his conclusions, did not provide any specific measurements regarding range of motion of the left shoulder, wrist and elbow, and grip strength and did not consider appellant's pain. He concluded that the Office erred in failing to obtain clarification from Dr. Schmidt regarding his findings or to refer appellant to another impartial medical specialist. As noted, Dr. Schmidt provided findings on range of motion relative to appellant's left upper extremity. However, he also pointed out that the clinical examination was within normal limits and that there were no restrictions as appellant had fully recovered from the effects of his employment-related fracture of the left radius mid-shaft. A schedule award can be paid only for a condition related to an employment injury.[7] As Dr. Schmidt found that appellant had fully recovered from his employment-related injury to his left upper extremity, he did not need to apply the A.M.A., *Guides* to his findings to obtain an impairment rating.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award for his left upper extremity resulting from his August 10, 1982 employment injury.

[6] *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

[7] *See Veronica Williams*, 56 ECAB 367 (2005). Permanent impairment is based on direct physiological connection between the employment injury and the part of the body for which a schedule award is claimed. *See Gregory C. Esparza*, 42 ECAB 911, 915 (1991).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2008 decision of the Office of Workers' Compensation Programs' hearing representative and the November 27, 2007 Office decision are affirmed.

Issued: September 25, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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