

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES S. BROPHY and DEPARTMENT OF TRANSPORTATION,
U.S. COAST GUARD, Washington, DC

*Docket No. 01-1444; Submitted on the Record;
Issued April 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that he is entitled to an additional schedule award for more than a 40 percent permanent impairment of the right upper extremity.

The Board has duly reviewed the case record and finds that appellant is not entitled to an additional schedule award.

The Office of Workers' Compensation Programs accepted that appellant sustained a right carpal tunnel syndrome with subsequent surgery and cervical spondylosis for a May 19, 1995 injury sustained while in the performance of his duties. By decision dated June 19, 2000, the Office granted appellant a schedule award for a 40 percent permanent loss of use of his right upper extremity. The period of the award ran from September 28, 1999 to February 17, 2002. Appellant requested an oral hearing. By decision dated February 22, 2001 and finalized February 23, 2001, an Office hearing representative affirmed that appellant was only entitled to a 40 percent permanent impairment of the right upper extremity, but modified its prior decision to reflect the beginning date for the schedule award to be November 3, 1995. Cost-of-living adjustments were included in the modified award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation,² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members of 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 American Medical Association, *Guides to the*

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

Evaluation of Permanent Impairment has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

In a September 28, 1999 report, Dr. Peter J. Delenick, a Board-certified orthopedic surgeon and appellant's attending physician, noted that, since appellant's May 19, 1995 work accident, appellant has had continued difficulty lifting and sustained use of his right arm. Physical examination findings revealed a tenderness to palpation diffusely about the cervical spine. Palpable spasm was noted both left and right of midline. Range of motion in the neck was restricted with 0 to 15 degrees of flexion and 0 to 15 degrees of cervical extension. Lateral rotation was 0 to 20 degrees to the left and 0 to 20 degrees to the right. Lateral flexion was 0 to 15 degrees to the left and 0 to 15 degrees to the right. Appellant was noted to have pain and limited range of motion of his right shoulder. Range of motion of the right shoulder was 0 to 135 degrees of flexion and 0 to 120 degrees of abduction but he did have weakness in external rotation as well as weakness in flexion and abduction as well. Appellant continued to have weakness in his right hand with numbness and tingling in the distribution of the medial median nerve. Some thenar atrophy was noted in the right hand along with weakness in grip strength. Appellant also had decreased sensation in the median nerve distribution to the thumb, index and long finger of the right hand. Dr. Delenick concluded that, under the A.M.A., *Guides*, appellant has a 40 percent impairment of his right upper extremity as a result of his injuries. He advised that this was due to the weakness, limited flexibility, numbness and tingling of appellant's right hand. Dr. Delenick further opined that appellant has an additional 20 percent impairment of the total body due to his cervical spondylosis.

In a report dated January 22, 2001, an Office medical consultant, Dr. Neven A. Popovic, a Board-certified orthopedic hand surgeon, advised that the A.M.A., *Guides* (4th ed.) was used to estimate appellant's impairment.⁴ Inasmuch as the method utilized to derive appellant's 40 percent impairment rating is no longer utilized in the new edition of the A.M.A., *Guides* and Dr. Popovic agreed with Dr. Delenick's opinion that appellant has a 40 percent impairment to the right upper extremity, appellant has no more than the 40 percent impairment to his right upper extremity which had been awarded.

The Board further notes that Dr. Delenick opined that appellant had an additional 20 percent to the whole person as a result of his cervical spondylosis.

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the implementing

³ *Id.*

⁴ In awarding the 40 percent impairment rating in its June 19, 2000 decision, the Office relied upon the Office medical adviser's finding, which was based upon Dr. Delenick's September 28, 1999 report, that appellant had "severe" right carpal tunnel syndrome due to entrapment neuropathy of the median nerve at the right wrist. See A.M.A., *Guides*, p. 57, Table 16 (4th ed. 1993). The fourth edition of the A.M.A., *Guides* provided two methods for evaluating impairment of the hand and upper extremities secondary to entrapment neuropathy: either measure the sensory and motor deficits or estimate the impairment according to the severity of involvement of each major nerve at each entrapment site. The A.M.A., *Guides* advised that the evaluator should not use both methods. A.M.A., *Guides*, p. 56 "[e]ntrapment [n]europathy," (4th ed. 1993).

regulations provide for the payment of a schedule award for the permanent loss of use of the cervical spine, the back or the body as a whole, no claimant is entitled to such an award.⁵

Dr. Delenick opined that appellant had an additional 20 percent of the body as a whole. As whole body impairments are not compensable under the provisions of the Act, appellant is not entitled to a schedule award on this basis. Further, Dr. Delenick indicated that this impairment rating was based upon appellant's cervical spondylosis. As impairments of the cervical spine are not compensable under the provisions of the Act, any impairment rating based upon cervical spondylosis is not compensable under the Act and appellant is not entitled to a schedule award on this basis. Further, as the Office medical adviser properly noted, Dr. Delenick failed to state the extremity involvement, the objective medical findings or the appropriate tables in the A.M.A., *Guides* used as the basis of his estimate. Accordingly, Dr. Delenick failed to identify any permanent impairment in a member of the body listed in the schedules of 5 U.S.C. § 8107 or 20 C.F.R. § 10.304, that would entitle appellant to a schedule award.

Section 8107(c) of Title 5 of the U.S. Code enumerates the following members and functions of the body as supporting the granting of a schedule award for permanent impairment thereto: arm, leg, hand, foot, eye, thumb, fingers, toes, hearing, vision and facial disfigurement. Section 10.304(b) of Title 20 of the Code of Federal Regulations adds the following members: breast, kidney, larynx, lung, penis, testicle, tongue, ovary and uterus. Schedule awards are payable for permanent impairment only to these enumerated body members and functions and are not payable for impairment to parts of the body other than these. If the medical evidence of record supported that appellant had permanent impairment to a body member listed in the schedules, causally related to his accepted employment condition of cervical spondylosis, then he would be entitled to a schedule award. However, no such medical evidence identifying such a permanent impairment to a schedule member, causally related to the accepted cervical spondylosis, was included in the record. Dr. Delenick related his impairment rating of 20 percent to the total body due to cervical spondylosis, which is not compensable under the provisions of the Act. Consequently, appellant has failed to establish that he is entitled to a schedule award on the basis of his accepted condition of cervical spondylosis.

The Board finds that the report of the Office medical adviser is based on an appropriate use of the A.M.A., *Guides* and represents the weight of the evidence. Thus, appellant has not established that he is entitled to a schedule award for more than the 40 percent impairment to his right upper extremity.

⁵ See *George E. Williams*, 44 ECAB 530 (1993); *James E. Mills*, 43 ECAB 215 (1991); *Joseph D. Lee*, 42 ECAB 172 (1990).

The decision of the Office Workers' Compensation Program dated February 22, 2001 and finalized February 23, 2001 is hereby affirmed.

Dated, Washington, DC
April 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member