U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD L. JACKSON and DEPARTMENT OF THE ARMY, ABERDEEN PROVING GROUNDS, Aberdeen, MD

Docket No. 01-1946; Submitted on the Record;
Issued April 18, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had a 13 percent permanent impairment of the left arm.

On May 13, 1985 appellant, then a 36-year-old motor vehicle operator, was helping to operate a sign post driver when the driver fell, striking him on the bridge of the nose and knocking him unconscious. Appellant sustained a head injury, broken nose, lacerated nose and a cervical strain. He stopped working that day and returned to sedentary work on January 4, 1986. A subsequent magnetic resonance imaging scan showed a herniated C5-6 disc. On August 12, 1985 appellant underwent surgery for a cervical discectomy and fusion at C5-6.

On April 5, 2001 appellant filed a claim for a schedule award. In a June 11, 2001 decision, the Office issued a schedule award for a 13 percent permanent impairment of the left arm.[1]

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

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] 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 loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants,

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[1] Appellant had previously contended that he had a loss of wage-earning capacity due to the employment injury. The Office, in a November 1, 1997 letter, indicated that appellant needed to submit a formal claim for a loss of wage-earning capacity. The record does not contain any subsequent claim by appellant for compensation for a loss of wage-earning capacity.

[2] 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.404 (1999).

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 Evaluation of Permanent Impairment* (A.M.A., *Guides*)[4] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In support of his request for a schedule award, appellant submitted a December 21, 2000 report from Dr. Robert W. Macht, a Board-certified surgeon, who gave ranges of motion for appellant's left shoulder, indicating appellant had 120 degrees of forward elevation, 20 degrees of backward elevation and 100 degrees of abduction. He noted tenderness on palpation of the left shoulder and reported appellant had pain with motion as well as resistance against active motion of his left shoulder and arm. Dr. Macht indicated that appellant had mild weakness but no atrophy or crepitation. He found decreased sensation to light touch over the left index finger. Dr. Macht reported that the range of motion and sensation in the legs were intact with no weakness or atrophy. He diagnosed bilateral radiculopathy of the legs and radiculopathy of the left arm after the May 13, 1985 cervical injury. Based on the fourth edition of the A.M.A., *Guides*, Dr. Macht stated that appellant had a Grade 2 decrease in the stability of the legs affecting the L5 nerve root. He concluded that appellant had a one percent permanent impairment of each leg. In relation to appellant's arm, Dr. Macht indicated that appellant had a Grade 4 sensory deficit and a Grade 4 weakness affecting the C6 nerve root on the left. He concluded that appellant, therefore, had a 15 percent permanent impairment due to radiculopathy. Dr. Macht added 10 percent permanent impairment for the loss of motion in the shoulder to conclude that appellant had a 24 percent permanent impairment of the arm.

In a May 12, 2001 memorandum, the Office medical adviser indicated that appellant had a Grade 1 sensory loss of the C6 nerve root. He, therefore, multiplied the 25 percent grade of a Grade 1 sensory loss by the maximum 8 percent permanent impairment for sensory loss of the C6 nerve root to conclude that appellant had a 2 percent permanent impairment due to sensory loss. The Office medical adviser indicated that appellant had a Grade 1 motor deficit of the C8 nerve root. He, therefore, multiplied the 25 percent grade of the Grade 1 motor loss by the 45 percent maximum impairment for motor loss of the C8 nerve root and calculated that appellant had an 11 percent permanent impairment due to motor loss. The Office medical adviser concluded that appellant had a 13 percent permanent impairment of the left arm.

The Office medical adviser used the fourth edition of the A.M.A., *Guides* to calculate appellant's permanent impairment. However, after February 1, 2001, the fifth edition of the A.M.A., *Guides* is to be used.[5] In this case, there is no change from the fourth edition to the fifth edition in the tables the Office medical adviser used to calculate appellant's permanent impairment.[6] Also, the Office medical adviser concluded that appellant had a Grade 1 sensory deficit and a Grade 1 motor deficit, which was the equivalent of Dr. Macht's statement that appellant had a Grade 4 sensory deficit and a Grade 4 motor deficit. The Office medical adviser, therefore, properly calculated appellant's permanent impairment due to sensory loss and motor

[4] Fifth edition (5th ed. 2001).

[5] FECA Bulletin 01-05 (issued January 29, 2001).

[6] *See* A.M.A., *Guides*, pp. 48-51, Tables 11-13 (4th ed. 1993); p. 424, Tables 15-15 to 15-17 (5th ed. 2000).

deficit in the left arm. The Office medical adviser, however, did not include the permanent impairment due to the loss of motion in the left shoulder and did not give any reason for his exclusion of the loss of motion from the schedule award calculation. The A.M.A., *Guides* shows that 120 degrees of forward elevation or flexion in the left shoulder equals a 4 percent permanent impairment of the arm. A measurement of 20 degrees of backward elevation or extension of the shoulder equals a 2 percent permanent impairment of the arm. A measurement of 100 degrees of abduction equals a 4 percent permanent impairment of the arm.[7] Dr. Macht thereby concluded that appellant had a 10 percent permanent impairment of the arm due to loss of motion. As the Office medical adviser did not include this loss of range of motion in determining appellant's impairment of the left arm, the case will be remanded for further development to be followed by a *de novo* decision on this issue.[8]

The decision of the Office of Workers' Compensation Programs, dated July 11, 2001, is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
April 18, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] A.M.A., *Guides*, pp. 476-477, Figures 16-40, 16-43 (5th ed.).

[8] The Board notes that Dr. Macht concluded that appellant had a one percent permanent impairment of each leg due to the employment injury while the Office medical adviser indicated that appellant did not have a permanent impairment of the legs because appellant had no weakness and intact sensation in the legs. On remand, the Office should clarify this point of dispute.