U. S. DEPARTMENT OF LABOR

Employees Compensation Appeals Board

In the Matter of BARRY M. KADISCH and DEPARTMENT OF THE NAVY, PNSY LABOR MANAGEMENT EMPLOYEE, Philadelphia, PA

Docket No. 99-2552; Submitted on the Record; Issued January 24, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether appellant has greater than a 12 percent impairment to his right arm and a 0 percent impairment to his left arm.

The Office of Workers' Compensation Programs initially accepted appellant's claim for bilateral carpal tunnel syndrome and then expanded the claim to include bilateral osteoarthritis of the first carpometacarpal (CMC) joint.

In a report dated January 10, 1997, Dr. M. Anthony Albornoz, a Board-certified internist, considered appellant's history of injury, performed a physical examination and diagnosed polyarticular rheumatoid arthritis. He also diagnosed osteoarthritis of the first CMC joints and bilateral carpal tunnel syndrome, which he attributed to appellant's employment. Dr. Albornoz found that appellant had normal range of motion of both wrists. In a report dated February 28, 1997, Dr. Albornoz further explained how osteoarthritis could result from repetitive motion.

In a report dated February 13, 1997, the district medical adviser reviewed Dr. Albornoz's January 10, 1997 report and considered that appellant had osteoarthritis in both hands, that he had persistent synovial hypertrophy in the right wrist, which was visible and apparent, and no synovial swelling in the left wrist. Using the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994), referring to Table 20, page 59, the district medical adviser opined that appellant had a 10 percent impairment to the right arm. On March 7, 1997 the Office expanded appellant's claim to include osteoarthritis of the CMC joint.

By decision dated March 13, 1997, the Office granted appellant a schedule award for a 10 percent impairment of the right arm. Appellant requested an oral hearing before an Office hearing representative, which was held on October 27, 1997. By decision dated December 29, 1997, the Office hearing representative affirmed the Office's March 13, 1997 decision that appellant had a 10 percent impairment to his right arm but remanded the case for the Office to determine the correct rating for appellant's upper right extremity. The Office hearing

representative also stated that the Office had not yet issued a decision regarding a permanent impairment of appellant's upper left extremity.

To resolve the conflict between the district medical adviser and Dr. Albornoz, the Office referred appellant to an impartial medical specialist, Dr. Samuel F. Broudo, a Board-certified orthopedic surgeon. In his report dated May 1, 1998, he considered appellant's history of injury, performed a physical examination and reviewed x-rays dated September 4, 1997 showing, in part, advanced degenerative arthrosis of the thumb CMC joints bilaterally and subluxation of the thumb metacarpal base radially. Dr. Brouda considered that the statement of accepted facts noted that appellant's claim was accepted for carpal tunnel syndrome. Among his physical findings, Dr. Broudo found that appellant had very slight parenthesis at the tips of his left third, fourth and fifth fingers. He found the motor and sensory examination was normal with normal pinching of thumb and index bilaterally. Dr. Broudo also found that there was swelling of the metaphalangeal (MP) joints of both hands and an ulnar drift at the MP joint level more so on the right than on the left. He further found that appellant had normal motion of both wrists except for the right wrist dorsiflexion of the order of 50 degrees for extension which corresponded to a 2 percent impairment of the right upper extremity based on the A.M.A., *Guides* (4th ed. 1994), using Figure 26, page 36. Regarding entrapment neuropathy, using Table 16 and pages 56 and 57, he noted that the A.M.A., *Guides* (4th ed. 1994) stated that "[t] he upper extremity impairment due to a mild residual carpal tunnel syndrome is 10 percent" and "[n]o additional impairment is allotted for loss of grip strength." Dr. Brouda concluded that appellant had no impairment for the left upper extremity and a right upper extremity impairment due to mild residual carpal tunnel syndrome of 12 percent, using Table 3, page 20 of the A.M.A., *Guides* (4th ed. 1994).

In a note dated May 29, 1998, the district medical adviser concluded that a 12 percent impairment to the right arm was proper. The district medical adviser noted that the date of Dr. Brouda's report was May 1, 1998.

By decision dated June 2, 1998, the Office granted appellant a schedule award for an additional two percent permanent impairment of the right arm.

By decision dated July 10, 1998, the Office denied appellant a schedule award for his upper left extremity.

Appellant requested an oral hearing before an Office hearing representative, which was held on February 23, 1999. At the hearing, appellant's attorney contended that Dr. Broudo's medical report was not probative because Dr. Broudo failed to consider that appellant had osteoarthritis of the first metacarpal joint in both hands as well as bilateral carpal tunnel syndrome. The attorney stated that the osteoarthritic condition would affect appellant's grip strength and, therefore, Dr. Broudo's omission to consider that condition was "a serious flaw." He also stated that Dr. Broudo's report was faulty because he found appellant had paralysis in the tips of the third, four and fifth fingers of the left hand but did not rate the nerve damage.

By decision dated May 3, 1999, the Office hearing representative affirmed the Office's March 13, 1997 and June 2, 1998 decision, finding that appellant had a 12 percent impairment to

his right arm and modified the Office's July 10, 1998 decision to reflect that appellant was entitled to continuing medical treatment for his left arm condition.

The Board finds that appellant has no greater than a 12 percent impairment to his right arm and a 0 percent impairment to his left arm.

The schedule award provision of the Federal Employees' Compensation Act[1] provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.[2] 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.[3]

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.[4] In the present case, due to a conflict in the medical evidence, the case was referred to Dr. Brouda, an impartial medical specialist, to determine the extent of appellant's impairment. In his May 1, 1998 report, using the A.M.A., *Guides* (4th ed. 1994), Dr. Brouda determined that appellant had a 10 percent impairment to his upper right extremity based on his mild residual carpal tunnel syndrome according to Table 16, page 57 and had a 2 percent impairment corresponding to extension derived from a 50 degrees dorsiflexion according to Figure 26, page 36. He concluded that appellant had a 12 percent impairment to his upper right extremity but no impairment to his left wrist based on normal range of motion. In his May 28, 1998 note, the district medical adviser agreed with Dr. Brouda's 12 percent impairment rating. Although appellant's attorney contends that Dr. Brouda failed to consider that appellant had osteoarthritis of the first metacarpal joint in both hands which would affect his grip strength and failed to assess appellant's nerve damage based on the paralysis in the tips of appellant's third, fourth and fifth fingers, Dr. Brouda made numerous physical findings regarding the condition of appellant's hands and properly used the A.M.A., *Guides* (4th ed. 1994) in making his impairment rating. His opinion is sufficiently complete and well rationalized to establish that appellant had a 12 percent impairment to his right arm and 0 percent impairment to his left arm. As an impartial medical specialist, Dr. Brouda's opinion constitutes the weight of the evidence.

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[1] 5 U.S.C. § 8107 *et seq.*

[2] *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

[3] *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

[4] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

The decision of the Office of Workers Compensation Programs dated May 3, 1999 is hereby affirmed.

Dated, Washington, DC
January 24, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member