

U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S.C. Code 8101 et seq. of Donald Pollock, claimant; Employed by the Department of the Navy, Case no. A06-669093. Hearing was held on May 30, 2001, in Atlanta, Georgia.

The issue for determination is whether the claimant is entitled to a schedule award for permanent partial impairment.

The claimant, date of birth March 5, 1949, was employed by the Department of the Navy as a supervisor. The Office accepted that he sustained a fall on January 7, 1997 resulting in a lumbosacral strain and lumbar fusion.¹

By report dated October 15, 1999, Dr. E.W. Hellman noted pain with lumbar flexion, 5/5 motor examination, grossly intact sensation, and negative straight leg raising. He noted the claimant may have problems from scar tissue from his prior surgeries. He wrote: "I'm particularly concerned about the impotence that he is having, and also he is complaining of some perigenital and perirectal numbness. He noted the claimant reported that he had some residual numbness of the legs. He noted the claimant was "not actually stable" and his condition was worsening.

By report dated September 25, 2000, an Office medical adviser noted Dr. Hellman's findings of no pain, 5/5 motor exam, 2 + reflexes, and intact sensation, were "all normal findings" and that the claimant had no impairment of a lower extremity.

The Office denied entitlement to a schedule award by decision dated October 23, 2000 on the basis that the medical evidence demonstrated no permanent partial impairment. The claimant disagreed with that decision and requested an oral hearing.

¹ Acceptance of lumbar disc herniation was inherent with the acceptance of lumbar fusion.

During the hearing, held May 30, 2001, the claimant's representative argued that Dr. Hellman made "several specific findings" consistent with permanent injury, including back and leg pain, loss of sensation, and impotence. He further argued that Dr. Hellman indicated the claimant's condition was not stable and therefore the Office's determination was premature. He argued that if Dr. Hellman's report lacked specificity required by the Office, then the Office should have initiated a second opinion examination. His arguments were reiterated by written brief.

A schedule award is not payable until maximum improvement of the claimant's condition has been reached. Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. ²

In the present case, the medical evidence does not establish permanent partial impairment. Dr. Hellman provided no positive examination findings in this regard. He noted complaints of numbness and impotence but reported normal motor and sensory examination. However, the examination results were cursory and it is unclear whether the report reflects a complete and comprehensive evaluation. Dr. Hellman also noted the claimant had not stabilized and his condition was worsening. The examination report was therefore premature.

² Orlando Vivens, 42 ECAB ____ (Docket No. 90-1500, issued January 15, 1991).