

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE V. JOHNSON and DEPARTMENT OF TRANSPORTATION,  
JAMES RIVER RESERVE FLEET, Fort. Eustis, VA

*Docket No. 00-365; Submitted on the Record;  
Issued December 12, 2000*

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DECISION and ORDER

Before MICHAEL E. GROOM, PRISCILLA ANNE SCHWAB,  
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant had more than a 15 percent impairment of his right upper extremity for which he received schedule awards; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing on his claim.

On January 6, 1992 appellant, then a 44-year-old rigger worker, filed a notice of traumatic injury, alleging that on December 30, 1991 he sprained his wrist when putting a crosswalk between two ships. On March 27, 1992 appellant's claim was accepted for a sprain of the right wrist. On June 17, 1993 appellant received a schedule award for 13 a percent permanent loss of use of the right upper extremity.

On July 13, 1998 appellant filed a notice of recurrence of disability resulting from a sprained wrist on July 8, 1998. By letter dated October 21, 1998, the Office accepted appellant's claim.

On February 3, 1999 appellant filed a claim.

The Office requested that Dr. Thomas M. Stiles, appellant's treating physician and a Board-certified orthopedic surgeon, determine the extent of appellant's permanent partial impairment due to his right wrist sprain. Dr. Stiles responded with a signed progress note dated March 17, 1999 in which he stated:

"There are other things rather than the ranges of motion of [appellant's] wrist that contribute to his disability; namely, he has permanent numbness in his ulna nerve distribution. He has marked post-traumatic arthritis in his distal radial ulna joint with loss of cartilage in this area. He has restricted motion in his elbow with motion from 10 degrees of flexion to 70 degrees of flexion. Flexion and extension of his wrist also are limited at 30 degrees each."

Dr. Stiles listed appellant's date of maximum medical improvement as July 29, 1998. He reported the active range of motion for radial deviation at 10 degrees, ulnar deviation at 15 degrees, dorsiflexion at 30 degrees and palmar-flexion at 30 degrees. Dr. Stiles recommended a 30 percent impairment rating of the right upper extremity.

Based on Dr. Stiles' figures and the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4<sup>th</sup> ed. 1993), the Office medical adviser concluded that appellant had a 15 percent impairment of the right upper extremity. He determined that appellant's 15 degrees of ulnar deviation equaled a 3 percent impairment of the right upper extremity.<sup>1</sup> He determined that appellant's 10 degrees of radial deviation equaled a 2 percent impairment of the right upper extremity.<sup>2</sup> As for the 30 degrees that Dr. Stiles noted for dorsiflexion, the Office medical adviser determined that under the A.M.A., *Guides* this amounted to a 5 percent impairment of the right upper extremity.<sup>3</sup> Finally, he determined that 30 degrees of palmar-flexion amounted to a 5 percent impairment of the upper extremity.<sup>4</sup> Adding these figures together, the Office medical adviser found a 15 percent impairment of the right upper extremity.

As appellant had previously been awarded a schedule award for a 13 percent impairment of the right upper extremity, in the decision of the Office dated July 19, 1999, appellant was awarded an extra 2 percent impairment of the right upper extremity.

In a note dated August 26, 1999 and received by the Office on September 27, 1999, appellant requested an oral hearing.

By decision dated November 1, 1999, the Office denied appellant's request for an oral hearing because it was not made within 30 days of the July 19, 1999 decision. The Office also denied appellant's request on the grounds that the issue in the case could equally well be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which established that the percentage of impairment awarded was incorrect.

The Board finds that the Office properly determined that appellant had no more than a 15 percent impairment to his right upper extremity.

The schedule award provision of the Federal Employees' Compensation Act<sup>5</sup> sets forth the number of weeks of compensation to be paid for 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

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<sup>1</sup> A.M.A., *Guides*, 38, Table 29.

<sup>2</sup> *Id.*

<sup>3</sup> A.M.A., *Guides*, 36, Table 26.

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 8101 *et seq.*

amount of compensation is paid in proportion to the percentage loss of use.<sup>6</sup> However, neither the Act nor its regulations specify the manner that the percentage of loss of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>7</sup>

Although Dr. Stiles indicated that he applied the A.M.A., *Guides* to determine that appellant had a 30 percent impairment of the right upper extremity, he did not explain how the A.M.A., *Guides* would lead to this conclusion. The Office medical adviser took Dr. Stiles' specific findings on ulnar and deviation, as well as dorsiflexion and palmar-flexion and applied these figures to the A.M.A., *Guides*. The Office medical adviser listed the proper pages and tables of the A.M.A., *Guides* he used to conclude that appellant had a 15 percent impairment of his right upper extremity. As the Office medical adviser properly applied the A.M.A., *Guides*, his finding that appellant had a 15 percent impairment of the right upper extremity is correct. As appellant already received an award for a 13 percent impairment of the right upper extremity, appellant was entitled to an extra award of 2 percent, which the Office awarded.

The Board also finds that the Office properly denied appellant's request for an oral hearing on his claim before an Office hearing representative.

Section 8124(b)(1) of the Act provides:

"Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>8</sup>

A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision.<sup>9</sup> In this case, the decision from which appellant was appealing was dated July 19, 1999 and appellant's request for an oral hearing was dated August 26, 1999. As the Office did not receive the request within 30 days, appellant was not entitled to an oral hearing. The Office considered whether to grant a hearing at its discretion and advised appellant that he could pursue his claim through the reconsideration process. As appellant may address the issues in this case by submitting to the Office new and relevant evidence with a request for reconsideration, the Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.<sup>10</sup>

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<sup>6</sup> 5 U.S.C. § 8107(c)(19).

<sup>7</sup> *John M. Gonzales, Jr.*, 48 ECAB 357, 361 (1997); *Thomas D. Gauthier*, 34 ECAB 1060 (1983).

<sup>8</sup> 5 U.S.C. § 8124(b)(1).

<sup>9</sup> 20 C.F.R. § 10.606(a).

<sup>10</sup> See *William E. Seare*, 47 ECAB 663, 667 (1996).

The decisions of the Office of Workers' Compensation Programs dated November 1 and July 19, 1999 are affirmed.

Dated, Washington, DC  
December 12, 2000

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member