

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTONIO ARELLANO and DEPARTMENT OF THE NAVY,
NAVAL STATION, PUBLIC WORKS, San Diego, CA

*Docket No. 99-2494; Submitted on the Record;
Issued December 11, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a 28 percent permanent impairment of his left upper extremity for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than a 28 percent permanent impairment of his left upper extremity.

Appellant, an asphalt worker, filed a traumatic injury claim alleging that on March 3, 1983 he injured his left wrist in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for contusion and strain of the left thumb on June 20, 1983. Appellant underwent surgeries on his left upper extremity on November 2, 1983, May 16, 1984, July 24 and September 12, 1985. The Office granted appellant a schedule award for 28 percent permanent impairment of his left upper extremity.¹

Appellant filed a notice of recurrence of disability on May 20, 1996 alleging a recurrence of disability due to his left upper extremity. Appellant underwent additional surgeries on October 27 and December 11, 1997. By decision dated April 29, 1999, the Office denied appellant's claim for an additional schedule award.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of

¹ The Office initially issued appellant a schedule award for 33 percent impairment of the left hand to run from February 28, 1986, the date of maximum medical improvement, until September 14, 1987. The hearing representative modified this decision on June 4, 1987 to reflect impairment of the left upper extremity resulting in an additional 7.08 weeks of compensation.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

In this case, appellant's attending physician, Dr. Alon A. Garay, a Board-certified orthopedic surgeon, issued a report on October 22, 1998 finding that appellant had reached maximum medical improvement. Dr. Garay stated that appellant had a loss of range of motion of the left thumb of one centimeter which was not a ratable impairment in accordance with the A.M.A., *Guides*. He further found that appellant had a loss of grip strength and slight to moderate constant pain in the left thumb. Dr. Garay did not correlate these findings with an impairment rating in the A.M.A., *Guides*.

The Office medical adviser reviewed appellant's medical history and recommended assessing the upper extremity impairment based on Table 27 of the A.M.A., *Guides*. He found that appellant underwent a resection arthroplasty on October 27, 1997 and that "this would be equivalent to a level of arthroplasty at the carpal bones, which is assessed at 12 percent upper extremity impairment."⁶

The Office medical adviser found that appellant underwent a carpal metacarpal arthrodesis or metacarpal fusion on May 16, 1984 and that this resulted in a six percent impairment of the thumb due to ankylosis.⁷ He found that this translated to a two percent impairment of the upper extremity.⁸ The Office medical adviser concluded that appellant had a 14 percent impairment of his left upper extremity.⁹

If an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. In such cases, the Office may rely on the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹⁰ The Board finds that Dr. Garay did not provide a clear opinion on appellant's impairment rating under the A.M.A., *Guides* and that the Office properly

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides*, 61, Table 27.

⁷ A.M.A., *Guides*, 27, Figure 13.

⁸ A.M.A., *Guides*, 18, Table 1; 19, Table 2.

⁹ The Board notes that the Office medical adviser improperly indicated that appellant reached maximum medical improvement on May 6, 1998. Appellant's attending physician, Dr. Garay, completed a report on that date and stated that appellant was not permanent and stationary. Dr. Garay provided the date of maximum medical improvement as October 22, 1998.

¹⁰ *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

relied on the Office medical adviser in determining that appellant was not entitled to an additional schedule award.

As appellant previously received a schedule award for 28 percent impairment of his left upper extremity, he is not entitled to an additional schedule award as his current impairment is only 14 percent.¹¹

The April 29, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 11, 2000

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹¹ The Board notes that, on appeal, appellant alleged that he improperly received his August 13, 1986 schedule award while entitled to compensation for wage loss. The Board notes that its jurisdiction is limited to decisions of the Office issued within one year of the date of appellant's appeal to the Board. As appellant's date of appeal is July 29, 1999, the Board may not review any decisions prior to July 29, 1998. 20 C.F.R. § 501.3(d)(2).