

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANEL A. MORALES and DEPARTMENT OF THE NAVY,
RODMAN NAVAL STATION, Panama

*Docket No. 97-2354; Submitted on the Record;
Issued May 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than an 11 percent permanent impairment of his right 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 an 11 percent permanent impairment of his right upper extremity for which he received a schedule award.

Appellant filed a claim alleging that he sustained electrical burns over 36 percent of his body in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for electrical burns to the head, arms, legs, chest and back. Appellant requested a schedule award on January 9, 1997. In a decision dated June 17, 1997, the Office granted appellant a schedule award for disfigurement to his head, neck and face in the amount of \$3,000.00.¹ By decision dated June 24, 1997, the Office granted appellant a schedule award for an 11 percent permanent impairment to his right upper extremity.

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 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

¹ Appellant did not request appeal of this decision in his July 2, 1997 letter to the Board.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

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. Alfredo Dubois, an orthopedic surgeon, completed a form report noting that appellant reached maximum medical improvement on March 11, 1990. He stated that appellant did not have pain and provided range of motion for appellant's right thumb. Dr. Dubois submitted treatment notes indicating that appellant's condition resulted in a decrease of right hand grip and limited abduction of the right thumb.

The Office medical adviser applied the A.M.A., *Guides* to the range of motion and loss of strength figures provided by Dr. Dubois and concluded that 30 degrees range of motion of the metacarpophalangeal joint was a 3 percent impairment.⁶ The Office medical adviser then considered Dr. Dubois' findings regarding appellant's loss of strength. Appellant demonstrated grip strength of 45 with his right hand and 65 with his left. The Office medical adviser applied the formula included in the A.M.A., *Guides* and concluded that appellant had a 10 percent impairment.⁷

In this case, Dr. Dubois completed a form report and indicated that he had not utilized the A.M.A., *Guides*. He also submitted treatment notes concluding that appellant had a loss of grip strength. The Office medical adviser applied the appropriate provisions of the A.M.A., *Guides* to this evidence and concluded that appellant had an 11 percent impairment of his right upper extremity.

The Board cases are clear that 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*.⁸ Therefore, the Board finds that appellant has no more than an 11 percent permanent impairment of his right upper extremity.

⁴ A.M.A., *Guides* (fourth edition 1993).

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

⁶ A.M.A., *Guides*, 27, Table 13.

⁷ A.M.A., *Guides*, 65, Table 34.

⁸ *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

The decision of the Office of Workers' Compensation Programs dated June 24, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 21, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

MEMORANDUM

TO: ECAB

FROM: PEK

RE: Anel A. Morales, 97-2354

I realize that the Board has jurisdiction over appellant's schedule award for facial disfigurement. I further realize that the Office did not follow its own procedures in granting this award.(R-151-152) As in *Harold B. Wright*, 48 ECAB ____ (Docket No. 95-654, issued January 8, 1997), the Office medical adviser did not personally examine appellant and there is no medical report addressing his disfigurement other than based on photographs included in the record at 118-119) However, to avoid set aside appellant's schedule award for disfigurement and requiring travel between PanA.M.A., and the district office, I chose not to take jurisdiction over this decision as appellant did not raise the issue on appeal. If the Board would prefer a different outcome please let me know.