

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SALVATORE TUZZA and U.S. POSTAL SERVICE,
POST OFFICE, Melville, NY

*Docket No. 99-692; Submitted on the Record;
Issued September 14, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established more than a 5 percent permanent impairment to his right ring finger; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's requests for a hearing.

In the present case, the Office accepted that appellant sustained a right ring finger injury in the performance of duty on February 15, 1996. By decision dated July 17, 1997, the Office issued a schedule award for a five percent permanent impairment to the right ring finger. In a decision dated March 23, 1998, an Office hearing representative affirmed the schedule award decision. By decision dated June 30, 1998, the Office denied appellant's request for an oral hearing. In a decision dated September 29, 1998, the Office again denied a request for an oral hearing.

The Board has reviewed the record and finds that the case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body, for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

² A. George Lampo, 45 ECAB 441 (1994).

In the present case, appellant's treating physician, Dr. John Leppard, an orthopedic surgeon, submitted treatment notes indicating that appellant had a crush injury to the ring finger resulting in a partial amputation of the finger. In a form report (CA-1303) dated April 8, 1997, Dr. Leppard recommended a 15 percent impairment of the arm. He indicated that appellant had atrophy, pain or discomfort. In a report dated August 13, 1996, Dr. Leppard indicated that appellant had a partial amputation of the finger and opined that appellant had a 15 percent permanent disability. He also submitted a form report indicating that appellant had 60 degrees of flexion at the distal interphalangeal (DIP) joint. An Office medical adviser, in a report dated June 25, 1997, indicated that 60 degrees of flexion in the DIP joint is a 5 percent impairment to the finger. The Office medical adviser did not address the issue of a partial amputation. The Board notes that an Office medical adviser stated in a March 2, 1998 report that the maximum for amputation at the DIP joint was five percent to the digit, but that is incorrect. The impairment is 5 percent to the hand, or 45 percent to the digit.³

The Board finds that a conflict in the medical evidence exists and the case requires further development of the evidence. Section 8123(a) of the Act provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁴ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁵

In this case, there is a conflict between the attending physician and the Office medical adviser with respect to the degree of permanent impairment. On remand, the Office should refer appellant, a statement of accepted facts and the case record to an appropriate specialist for a reasoned opinion as to the percentage of permanent impairment under the A.M.A., *Guides*.⁶ After such further development as the Office deems necessary, it should issue an appropriate decision.

In view of the Board's holding, it will not address the denial of a hearing issue.

³ See A.M.A., *Guides*, 18, Figure 3.

⁴ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁵ *William C. Bush*, 40 ECAB 1064 (1989).

⁶ See also FECA Program Memorandum No. 88, which discusses partial finger amputation.

The decisions of the Office of Workers' Compensation Programs dated September 29, June 30 and March 23, 1998 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
September 14, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member