

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 11, 2009 appellant, then a 36-year-old electronic technician, filed a traumatic injury claim alleging on that date he sustained a fracture of his right hand while he was moving a chair. His hand slipped and struck a column. On December 21, 2009 the Office accepted appellant's claim for closed fracture of the metacarpal bone. Appellant returned to full duties effective September 11, 2009.

Appellant filed a claim for a schedule award. In a clinic note dated September 11, 2009, Dr. Stephen Samelson, a Board-certified orthopedic surgeon, stated that appellant's sensation was intact and that he had full motion and decent strength. The base of the right hand was not bothering appellant but he still had a little problem with the metaphalangeal joint and some burning down the finger. Dr. Samelson assessed appellant with fifth metacarpal fracture with persistent burning of the hand. In an October 9, 2009 report, he noted that appellant had ulnar neuropathy on the fifth metacarpal fractures with possible dyesthesia. On examination, appellant had full motion and sensory examination seemed intact. Dr. Samelson noted no obvious motor atrophy or obvious tenderness. In an October 30, 2009 note, he assessed right hand pain, healed metacarpal base fracture and possible ulnar neuropathy.

In a December 11, 2009 report, an Office medical adviser noted that appellant sustained an intra-articular fracture at the base of the fifth metacarpal with good apposition and alignment. He noted that, after treatment, appellant regained full motion with normal sensation and returned to full duty with no residual impairment. The Office medical adviser found that the final impairment of appellant's right hand equaled zero percent.

By decision dated January 4, 2010, the Office denied appellant's claim for a schedule award. It found that the medical evidence did not support permanent impairment.

Thereafter, appellant submitted a December 11, 2009 report from Dr. Samelson who diagnosed a healed fifth metacarpal fracture with resolving neuropathy. Dr. Samelson concluded that appellant could return to activities as tolerated without restrictions.

On January 14, 2010 appellant requested review of the written record by an Office hearing representative.

By decision dated March 29, 2010, the Office hearing representative affirmed the January 4, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404; FECA Bulletin 9-03, issued March 15, 2009 (providing the use of the sixth edition of the A.M.A., *Guides* effective May 1, 2009. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards, and Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

loss or loss of use, of schedule members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th edition 2009), has been adopted by the Office as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

The Office accepted appellant's claim for closed fracture of the right metacarpal bone. Appellant filed a claim for a schedule award. However, the medical evidence of record does not establish any impairment to his right upper extremity as a result of the accepted employment injury. It is appellant's burden of proof to establish entitlement to a schedule award.⁵ The Office procedures provide that to support a schedule award, the record must contain probative medical evidence that establishes permanent impairment in detail, provides a percentage of impairment and an opinion that the impairment is permanent and stable.⁶ The Board finds that appellant's physician, Dr. Samelson, did not submit any evidence that appellant sustained permanent impairment to his right hand. Dr. Samelson reported on October 9, 2009 that appellant had full motion, that his sensory examination was intact and that he had no obvious motor atrophy or tenderness. He concluded that appellant was able to resume his activities as tolerated and without restrictions. This report fails to establish permanent impairment due to the accepted employment injury.

The Office medical adviser found that appellant had regained full motion and normal sensation and returned to his work with no residual impairment. Accordingly, he found that the final impairment of appellant's right hand was zero percent.

The Board finds that appellant has not submitted medical evidence to establish that he sustained permanent impairment to his right upper extremity. Appellant is not entitled to a schedule award.

CONCLUSION

The Board finds that appellant has not established that he sustained permanent impairment of his right hand.

⁴ *Id.*

⁵ *Tammy L. Meehan*, 53 ECAB 220 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards, and Permanent Disability Claims*, Chapter 2.808.6(b) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 29 and January 4, 2010 are affirmed.

Issued: April 14, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board