

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD F. LARGE and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Willow Grove, Pa.

*Docket No. 95-2956; Submitted on the Record;
Issued February 11, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had a 41 percent permanent impairment of the left arm.

The case has been on appeal previously.¹ On January 14, 1985 appellant, then a 59-year-old electrician, fell from a ladder and sustained a comminuted fracture of the distal left radius. The Office accepted appellant's claim and paid appropriate compensation until appellant returned to light-duty work on October 10, 1986. On May 13, 1986 Dr. Mark Nissenbaum, a Board-certified orthopedic surgeon, performed a resection of the left distal ulna and a flexor tenolysis of the second through fifth fingers of the left hand. On September 26, 1987 appellant retired and began receiving disability retirement benefits. On January 18, 1988 appellant underwent surgery for post-traumatic arthritis of the left wrist, at which time Dr. James Hunter, a Board-certified orthopedic surgeon of professorial rank, performed a wrist arthrodesis procedure which resulted in a fusion of the left wrist and performed exploration and resection of an ulnar nerve dorsal sensory branch neuroma. On June 6, 1988 appellant underwent additional surgery for a volar plate release of the proximal interphalangeal joint of the fourth left finger with tenotomy of the flexor digitorum profundus tendon of the finger and arthrodesis of the distal interphalangeal joint of the finger. On May 14, 1990 Dr. Hunter performed surgery for removal of plant tenolysis and extensor shortening of the fifth finger of the left hand. On September 4, 1990 the Office issued a schedule award for a 21 percent permanent impairment of the left arm for the period May 8, 1990 through August 9, 1991. In the June 17, 1991 decision, the Board set aside the Office's September 4, 1990 decision on the grounds that it had improperly determined that the date of maximum improvement, and hence the date of the commencement of the schedule award, was May 8, 1990. The Board pointed out that appellant had additional surgery on his left hand on May 14, 1990 which was after the date set by the Office as the date of

¹ Docket No. 91-363 (issued June 17, 1991). The history of the case is contained in the prior decision and is incorporated by reference.

maximum improvement. The Board found that the medical evidence of record had not established that appellant's condition stabilized as of May 8, 1990. The Board therefore set aside the Office's September 4, 1990 decision and remanded the case for further development to determine the date appellant reached maximum medical improvement and the extent of appellant's permanent impairment as of that date.

On July 29, 1994 appellant underwent surgery on the fifth left finger for repair of the extensor tendon to release of a flexion contracture. On June 19, 1995 the Office issued a schedule award for an additional 20 percent permanent impairment of the left arm for a total 41 percent permanent impairment of the left arm. The period of the schedule award was May 11, 1995 through July 20, 1996. In an August 14, 1995 decision, the Office denied appellant's request for a hearing before an Office hearing representative.

The Board finds that the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

The Office based its schedule award determination on the April 27, 1995 report of Dr. Richard Valdesuso, an orthopedic surgeon who indicated that appellant, in his left hand, had prominent fourth extensor compartment tendons which were bow stringing dorsally. He concluded that appellant apparently had lost the extensor retinaculum. Dr. Valdesuso reported that appellant's left wrist was fused in an ulnar deviated posture with a slight flexion. He noted that when appellant was asked to make a fist he was able to bring all his fingers down except for the ring and small finger distal interphalangeal joints which had no flexion. Dr. Valdesuso stated that appellant had an extensor lag of 15 to 20 degrees of the long and ring fingers. He indicated that the small finger proximal interphalangeal joint had a range of motion of -85 degrees to 118 degrees but could be passively extended to -10 degrees. Dr. Valdesuso noted that appellant had evidence of Dupuytren's disease affecting the radial side of both hands. He concluded that appellant had a Boutonniere deformity of the small finger of the left hand. Dr. Valdesuso stated that appellant had undergone a reconstruction which had failed, leading to a recurrent Boutonniere deformity. He reported that appellant lacked extension of the proximal interphalangeal joint and noted that whenever he flexed the small finger, he had a crossover over

² 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

⁴ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

the ring finger which interfered with extension of the ring finger. Dr. Valdesuso suggested that this may be the result of the loss of ulnar collateral ligament tissue. In a May 11, 1995 separate form, Dr. Valdesuso indicated that appellant had a 41 percent permanent impairment of the left arm due to ankylosis of the wrist at 25 degrees ulnar deviation and 25 degrees dorsiflexion as well as a 5 percent permanent impairment due to pain and weakness. While Dr. Valdesuso gave an appropriate rating of 25 percent permanent impairment for ankylosis at 25 degrees dorsiflexion,⁵ the A.M.A., *Guides* indicate that ankylosis of the wrist at 25 degrees ulnar deviation equals a 16 percent permanent impairment of the left arm, not 15 percent as indicated by Dr. Valdesuso.⁶ Furthermore, neither Dr. Valdesuso nor the Office medical adviser, who concurred with Dr. Valdesuso's calculation, considered whether appellant had any permanent impairment rating of the fingers based on the problems reported by Dr. Valdesuso. Also, Dr. Valdesuso gave a blanket statement that appellant had a five percent impairment of the left arm due to pain and weakness without any description of how he arrived at that calculation of the permanent impairment of the arm caused by pain and weakness, based on the A.M.A., *Guides*. The case must therefore be remanded for further development.

On remand, the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate specialist for an examination. The specialist should be requested to give a description of the condition of appellant's left arm, complete with ranges of motions and angles of ankylosis of all the appropriate joints as well as a description of any pain and weakness of the left arm. The specialist should then provide a permanent impairment rating of the left arm based on the A.M.A., *Guides*. The Office medical adviser should thoroughly review the report of the specialist to determine its accuracy. After further development as it may find necessary, the Office should issue a *de novo* decision.

⁵ A.M.A., *Guides* p. 36, figure 26 (4th ed. 1993)

⁶ *Id.*, p. 38, figure 29.

The decisions of the Office of Workers' Compensation Programs, dated August 14 and June 19, 1995, are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
February 11, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member