

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH McCLENDON, SR. and DEPARTMENT OF VETERANS AFFAIRS,
CARL VINSON VETERANS ADMINISTRATION MEDICAL CENTER,
Dublin, Ga.

*Docket No. 96-1953; Submitted on the Record;
Issued May 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a three percent impairment of the left hand for which he received a schedule award.

The Board has duly reviewed the case record and finds that appellant has no more than a three percent impairment of the left hand for which he received a schedule award.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a fracture of the left third finger as a result of a February 17, 1995 employment injury. On December 20, 1995 appellant filed a claim for a schedule award. By decision dated May 1, 1996, the Office granted appellant a schedule award for a three percent permanent impairment of the left hand. The period of the award ran from November 27, 1995 to January 17, 1996 for a total of 7.32 weeks of compensation.

Under section 8107 of the Federal Employees' Compensation Act,¹ and section 10.304 of the implementing federal regulations,² 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 under the law for 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*

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

Impairment (4th ed. 1993) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

Following his employment injury, appellant received treatment from Dr. James D. Peters, an osteopath. In a report dated November 27, 1995, Dr. Peters discussed appellant's complaints of continued discomfort of his ring finger and found that appellant had good motion of his finger and that it did not appear to be tender to palpation. Dr. Peters diagnosed "a fibrous union following a tuft fracture of the distal phalanx of the left ring finger." In a form report dated December 27, 1995, Dr. Peters diagnosed a symptomatic tuft fracture of the distal phalanx of the ring finger and noted that he had discharged appellant from treatment on November 27, 1995.

By letter dated January 31, 1996, the Office requested that Dr. Peters examine appellant to determine the extent of any permanent impairment caused by his accepted employment injury. The Office advised that it used the A.M.A., *Guides* as the standard for rating purposes and enclosed a form for guidance.

In a report dated February 28, 1996, Dr. Peters found that appellant had reached maximum medical improvement on November 27, 1995. He determined that, for the left ring finger, appellant had 35 degrees of retained flexion of the distal interphalangeal (DIP) joint, 81 degrees retained flexion of the proximal interphalangeal (PIP) joint and 95 degrees retained flexion of the metacarpophalangeal (MCP) joint. Dr. Peters found that appellant had no additional impairment due to pain or weakness as he had "subjective complaints only." He concluded that appellant had a one percent impairment of the whole person. In a chart note of the same date, Dr. Peters concluded that appellant had a two percent impairment of the hand.

In a chart note dated March 20, 1996, Dr. Peters noted that appellant continued to complain of pain but that he did not "appear to be very tender when I squeeze down on the distal phalanx."

On November 27, 1995 an Office medical adviser reviewed Dr. Peters February 28, 1996 report. He found that, according to the A.M.A., *Guides*, 95 degrees retained flexion of the MP joint constituted a 0 percent impairment,⁴ 81 degrees retained flexion of the PIP joint constituted a 12 percent impairment,⁵ and 35 degrees retained flexion of the DIP joint constituted an 18 percent impairment.⁶ The Office medical adviser combined the 12 percent and 18 percent impairments in range of motion of appellant's left ring finger using the combined values chart to reach a 28 percent impairment finding.⁷ He then converted the 28 percent impairment of the left ring finger to a 3 percent impairment of the left hand.⁸ As the Office medical adviser's report

³ *James J. Hjort*, 45 ECAB 595 (1994).

⁴ A.M.A., *Guides* 34, figure 23.

⁵ *Id.* 33, figure 21.

⁶ *Id.* 32, figure 19.

⁷ *Id.* 34, 322.

⁸ *Id.* 18, Table 1.

conforms with the A.M.A., *Guides* and exceeds the impairment finding of Dr. Peters, appellant's attending physician, it constitutes the weight of the medical evidence. The Board further notes that appellant has not submitted any other medical evidence which, utilizing the A.M.A., *Guides*, explains why he has more than a three percent permanent impairment of the hand.

The decision of the Office of Workers' Compensation Programs dated May 1, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 20, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member