

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TALMADGE DAWSON and U.S. POSTAL SERVICE,
AIRPORT MAIL FACILITY, San Francisco, Calif.

*Docket No. 97-2822; Submitted on the Record;
Issued June 24, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that residuals of appellant's right wrist and elbow injuries had ceased; and (2) whether the Office properly determined that appellant did not have a ratable permanent impairment entitling him to a schedule award.

The case has been before the Board on a prior appeal. In a decision dated February 11, 1997, the Board set aside a September 21, 1994 Office decision and remanded the case for further development.¹ The Board noted that, although the referral physician, Dr. Edward A. Attix, an orthopedic surgeon, had stated in his narrative report that appellant had full range of elbow motion, the form report providing range of motion for the right elbow had shown a ratable impairment for loss of flexion.² The history of the case as discussed in the prior Board decision is incorporated herein by reference.

On remand the Office referred appellant, medical records and a statement of accepted facts, to Dr. Donald C. Faust, an orthopedic surgeon, who provided a narrative report dated July 25, 1997, and completed form reports (EN-1303) for the wrist and elbow. By decision dated August 27, 1997, the Office found that residuals of the employment injury had ceased and that the evidence did not establish a ratable permanent impairment.

The Board has reviewed the record and finds that the Office properly determined that residuals of the employment injury had ceased.

¹ Docket No. 95-453.

² The Board did not address the issue of whether residuals of the employment injury had ceased.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.³

In his July 25, 1997 report, Dr. Faust provided a history, results on examination and reviewed medical records. Dr. Faust reported complete motion of the shoulders, elbow and hands, with no atrophy. He indicated that, although appellant complained of pain in his right arm, there were no objective findings and no recommendations for further treatment. In response to the specific questions posed by the Office, Dr. Faust indicated that appellant did not have any current disability or impairment attributable to the employment injury.

The Board finds that Dr. Faust represents the weight of the medical evidence with respect to continuing residuals of the employment injury.⁴ He provided an opinion, based on a complete background, indicating that appellant did not have any continuing disability or treatable condition causally related to his accepted right wrist and elbow injuries. Appellant has not submitted any medical evidence supporting a continuing employment-related condition. Accordingly, the Board finds that the Office properly determined that residuals of the employment injuries had ceased as of August 27, 1997.

The Board further finds that appellant is entitled to a one percent permanent impairment for the right arm.

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.⁵ 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.⁶

As noted above, Dr. Faust reported that appellant completed motion on the elbow and hands. The form report for the elbow showed 140 degrees of flexion, 0 degrees extension, and 80 degrees of pronation and supination. These are considered normal and would not result in an impairment under the *Guides*.⁷

³ *Patricia A. Keller*, 45 ECAB 278 (1993).

⁴ It is noted that appellant has an accepted left shoulder injury for which he has received compensation on the periodic roll. The left shoulder injury is not at issue in this case.

⁵ 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).

⁶ *A. George Lampo*, 45 ECAB 441 (1994).

⁷ A.M.A., *Guides*, (4th ed.) 40, 41, Figures 32, 35.

Once again, however, there is a discrepancy between a reported range of motion and the finding of no ratable permanent impairment. Dr. Faust reported on the EN-1303 that appellant had 15 degrees of radial deviation for the right wrist. Although Dr. Faust indicated on the form that appellant had no ratable impairment, the *Guides* clearly indicate, at Figure 29, that 15 degrees of radial deviation results in a one percent impairment to the arm.⁸

Rather than remand the case again for additional development, the Board finds that appellant is entitled to a one percent impairment for loss of range of motion in the right wrist based on the medical evidence. On return of the case record, the Office should issue an appropriate schedule award. The date of maximum medical improvement would be the date of the examination by Dr. Faust, July 15, 1997.

The decision of the Office of Workers' Compensation Programs dated August 27, 1997 is affirmed with respect to the determination that residuals had ceased, and modified to reflect that appellant has a one percent permanent impairment to the right arm.

Dated, Washington, D.C.
June 24, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁸ *Id.*, 38, Figure 29.