

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANNY L. GILLEY and U.S. MARINE CORPS, COMBAT DEVELOPMENT
HEADQUARTERS, WATERWORKS FACILITY, Quantico, Va.

*Docket No. 97-1949; Submitted on the Record;
Issued March 23, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained greater than a five percent impairment of the right little finger, for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied continuation of pay on the grounds that appellant did not file a notice of traumatic injury within 30 days of the injury.

On July 8, 1995 appellant, then a 42-year-old water treatment plant operator, filed a claim for an injury to his right fourth (little) finger sustained on September 14, 1993 when his finger was caught in exposed valve gears. In an associated statement, appellant stated that he delayed filing a claim due to personal matters, that he wanted to wait until his finger healed before filing a claim, and that a physician advised him it would take up to a year after injury for the nerves to regenerate. The Office accepted appellant's claim for a laceration of the right fourth finger necessitating removal of the fingernail. Appellant did not lose time from work, other than for initial medical treatment, at the time of the injury.

A September 14, 1993 employing establishment dispensary note reports, that appellant sustained a "7 [millimeter] jagged laceration to nail bed, fingernail avulsed, ecchymoses beneath nail, profuse bleeding." Dispensary notes through October 20, 1993 note, that the laceration required six sutures to close, and to repair the nail bed and that appellant complained of numbness at the site of injury.

By decision dated June 25, 1996, the Office denied appellant's claim for continuation of pay as he failed to provide notice of his traumatic injury within 30 days of September 14, 1993.

In a June 28, 1996 note, Dr. E.D. Baugh, an attending Board-certified family practitioner, recommended waiting 8 to 12 months after the date-of-injury to assess the extent of any permanent damage to the right little finger.

In a July 24, 1996 report, Dr. Mitzi J. Sampson, an attending orthopedic surgeon, diagnosed a mild peripheral dysesthesia at the distal 1 centimeter of the right little finger, with “mild sensory loss to light touch at distal tip.”

On August 5, 1996 appellant claimed a schedule award. In an August 12, 1996 letter, the Office advised appellant that further medical evidence was necessary to evaluate any permanent impairment to the right little finger.

In a September 6, 1996 report, Dr. Sampson stated that appellant had reached maximum medical improvement, and assessed the degree of permanent impairment to the right little finger referring to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) (hereinafter, the A.M.A., *Guides*). Dr. Sampson noted mild to moderate pain in the right fifth digit distal to the distal interphalangeal joint, with numbness greater than pain, interfering somewhat with appellant’s grip. Dr. Sampson noted that appellant did “not have any feeling inside end of his finger (actually has dysarthria). Dr. Sampson determined a 10 percent loss of range of motion of the distal interphalangeal joint from 70 to 60 degrees, with mild weakness of the hand flexors.

In a February 12, 1997 report, an Office medical adviser reviewed the record and a statement of accepted facts and found a 5 percent impairment to the right little finger for loss of motion according to page 32, figure 14 of the A.M.A., *Guides*, as the distal interphalangeal joint was limited to 60 degrees out of 70.

By decision dated April 21, 1997, the Office awarded appellant a schedule award for a 5 percent impairment of the right little finger, equivalent to .75 weeks of compensation, covering the period September 14 to 19, 1994. The award was paid in a lump-sum check for \$336.60.

Regarding the first issue, the Board finds that appellant has not established that he sustained greater than a 5 percent impairment of the little finger.

Section 8107 of the Federal Employees’ Compensation Act¹ and section 10.304 of the implementing regulations² provide that schedule awards are payable for permanent impairment of specified body members, functions or organs, but do not specify how to determine the percentage of impairment. Therefore, the Office has adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoptions.³ The A.M.A., *Guides* set forth standardized, objective procedures for determining permanent impairment due to pain, sensory deficit, loss of strength and loss of motion. Proper use of the A.M.A., *Guides* ensures consistent results and equal justice for all claimants.

In the present case, an Office medical adviser used the appropriate tables and grading schemes of the A.M.A., *Guides* in determining that appellant had a 5 percent permanent

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989); *Francis John Kilcoyne*, 38 ECAB 168, 170 (1986).

impairment of the right little finger due to loss of range of motion. Appellant has not presented medical evidence indicating that the February 12, 1997 schedule award calculation was in error, or asserting a higher percentage of permanent impairment. Thus, appellant has failed to establish that he sustained greater than a 5 percent permanent impairment of the right little finger.

Regarding the second issue, the Board finds that the Office properly denied continuation of pay on the grounds that appellant did not timely file a notice of traumatic injury within 30 days of the injury.

Section 8118⁴ of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee “who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.” Section 8122(a)(2)⁵ provides that written notice of injury must be given as specified in section 8119. The latter section provides in part that notice of injury shall be given in writing within 30 days after the injury.⁶ The Office’s implementing regulations state that “specified employees who file a claim for a period of wage loss caused by a traumatic injury shall be entitled, under certain circumstances, to have their regular pay continued for a period not to exceed 45 days.”⁷ The applicable regulations further specify that in order to receive continuation of pay, an employee must have sustained a traumatic job-related injury, must file a claim for a period of wage loss within 30 days of the injury on an approved form, and the disability for which the employee is claiming must occur within 90 days from the date of injury.⁸

In the instant case, appellant filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation on July 8, 1995, for the injury which occurred on September 14, 1993. As the Form CA-1 was filed more than 30 days following the injury, the claim for continuation of pay is barred by the applicable time provision. Therefore, under the Act and applicable regulations, appellant is not entitled to continuation of pay.⁹

⁴ 5 U.S.C. § 8118.

⁵ 5 U.S.C. § 8122(a)(2).

⁶ 5 U.S.C. § 8119(a), (c).

⁷ 20 C.F.R. § 10.200.

⁸ 20 C.F.R. § 10.201(a).

⁹ Appellant alleged that he waited to file a claim until he felt he had attained maximum medical improvement. The Board has rejected mental or physical incapacitation as a basis for excusing the failure to file a claim for continuation of pay within the 30-day time limit; see *Saundra N. Phillips*, 43 ECAB 311 (1991); *William E. Ostertag*, 33 ECAB 1925 (1982).

The decisions of the Office of Workers' Compensation Programs dated April 21, 1997 and June 25, 1996 are hereby affirmed.

Dated, Washington, D.C.
March 23, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member