

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EARL EWING and DEPARTMENT OF THE NAVY,  
NAVY FINANCE CENTER, Cleveland, OH

*Docket No. 98-555; Submitted on the Record;  
Issued October 27, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant sustained greater than an eight percent permanent impairment of the left hand for which he received a schedule award.

This is the fourth appeal in this case. By decision dated August 8, 1991,<sup>1</sup> the Board remanded the case for further development and a *de novo* decision because it was unclear from the record how the Office of Workers' Compensation Programs had arrived at the schedule award granted to appellant. By decision dated February 4, 1993,<sup>2</sup> the Board remanded the case for further development as it was unclear how the Office had arrived at an additional schedule award granted to appellant. By decision dated May 16, 1997,<sup>3</sup> the Board affirmed a September 16, 1994 Office decision in which the Office found that appellant sustained no greater than an eight percent permanent impairment of the left hand for which he received a schedule award. The facts of this case are more fully set forth in those prior decisions of the Board and are herein incorporated by reference.

Following issuance of the Board's May 16, 1997 decision, appellant filed a reconsideration request with the Office on July 25, 1997. He argued what he considered to be deficiencies in the report of Dr. Stanley H. Nahigian, a Board-certified orthopedic surgeon, whose opinion regarding appellant's permanent impairment was the basis of the schedule award granted by the Office.

Appellant also submitted the results of an electromyogram and nerve conduction study performed on February 24, 1994 by Dr. A.R. Craciun, a Board-certified neurologist. In his report, Dr. Craciun did not address appellant's permanent impairment of the left hand.

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<sup>1</sup> Docket No. 91-535.

<sup>2</sup> Docket No. 92-1124.

<sup>3</sup> Docket No. 95-661.

By decision dated October 23, 1997, the Office denied modification of its July 21, 1993 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained greater than an eight percent permanent impairment of the left hand for which he received a schedule award.

In its May 16, 1997 decision, the Board reviewed all the evidence of record and affirmed the Office's September 16, 1994 decision in which the Office found that appellant sustained no greater than an eight percent permanent impairment of the left hand for which he received a schedule award. Therefore, in this appeal, the Board will consider only that evidence submitted to the record since its May 16, 1997 decision.

In his July 25, 1997 request to the Office for reconsideration of its decision to grant him a schedule award for an eight percent permanent impairment of the left hand, appellant argued what he considered to be deficiencies in the report of Dr. Nahigian, a Board-certified orthopedic surgeon, whose opinion regarding appellant's permanent impairment was the basis of the schedule award granted by the Office. However, lay persons are not competent to render a medical opinion.<sup>4</sup> Therefore, this evidence does not establish that appellant sustained greater than an eight percent permanent impairment of the left hand.

Appellant also submitted the results of an electromyogram and nerve conduction study performed on February 24, 1994 by Dr. Craciun, a Board-certified neurologist. In his report, Dr. Craciun did not address appellant's permanent impairment of the left hand. Therefore, this report does not establish that appellant sustained greater than an eight percent permanent impairment of the left hand.

The October 23, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
October 27, 1999

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski

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<sup>4</sup> See *James A. Long*, 40 ECAB 538, 542 (1989).

Alternate Member