

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDUARDO ARMENDARIZ and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Dallas, TX

*Docket No. 98-1229; Submitted on the Record;
Issued October 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has a permanent impairment of the right upper extremity that is causally related to his July 6, 1996 employment injury.

On July 6, 1996 appellant, a border patrol agent, sustained an injury while in the performance of his duties when his all-terrain vehicle overturned and pinned him on his right side. Dr. Ascension Mena, an emergency room physician, diagnosed right elbow contusion, rule out occult fracture. On July 10, 1996 Dr. John S. Jackson, appellant's orthopedic surgeon, diagnosed sprain of the ulnar collateral ligament. The Office of Workers' Compensation Programs accepted appellant's claim for right elbow contusion.

On November 12, 1996 appellant filed a claim for a schedule award. On October 26, 1996 Dr. Jackson reported that appellant had reached maximum medical improvement, that range of motion was 20 to 130 degrees and that appellant had a 3 percent permanent impairment of the right upper extremity. On November 25, 1996 the Office sought a supplemental report from Dr. Jackson but sent the request to the emergency medical center where appellant was first treated instead of to Dr. Jackson's office. Further, the salutation of the Office's letter referenced a Dr. Watson. The case record does not show that a Dr. Watson has been associated with appellant's claim. The Office received no response from Dr. Jackson.

In a decision dated January 16, 1998, the Office denied appellant's claim on the grounds that his condition "was not severe enough to be considered ratable."

The Board finds that this case is not in posture for a determination of whether appellant has a permanent impairment of the right upper extremity that is causally related to his July 6, 1996 employment injury.

As developed, the medical opinion evidence from Dr. Jackson indicates that appellant has a ratable permanent impairment. The Office felt that Dr. Jackson's October 26, 1996 report was

incomplete and requested additional information. However, the Office did not direct its request to Dr. Jackson's office and the development letter began, "Dear Dr. Watson." Because the grounds upon which the Office denied appellant's claim is not supported by the medical opinion evidence of record and because Dr. Jackson's failure to respond may be attributed to the Office's misdirected request for additional information, the Board will set aside the Office's January 16, 1998 decision and remand the case for proper development of the medical evidence. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to a schedule award.

The January 16, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
October 22, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member