

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN Y. KARAPINAR, JR. and DEPARTMENT OF THE AIR FORCE,
McCLELLAN AIR FORCE BASE, CA

*Docket No. 98-1223; Submitted on the Record;
Issued September 20, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than a 20 percent permanent impairment of his right upper extremity for which he received a schedule award.

On November 4, 1996 appellant, then a 35-year-old equipment cleaner, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he injured his right hand in the performance of duty on October 31, 1996. His condition was diagnosed as a laceration of the right thumb. Appellant ceased working on the date of his injury and was released to return to work in a limited-duty capacity on November 4, 1996. He continued to work in a limited-duty capacity until his temporary appointment expired on February 4, 1997.¹ The Office of Workers' Compensation Programs subsequently accepted appellant's claim for right thumb laceration and awarded compensation for temporary total disability for the period February 5 through May 29, 1997. Additionally, on August 7, 1997, appellant received a schedule award for a 20 percent loss of use of his right upper extremity. The award covered a period of 62.4 weeks from May 30, 1997 to August 9, 1998.

The Board has duly reviewed the case on appeal and finds that it is not in posture for a decision.

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards

¹ The employing establishment hired appellant on February 5, 1996 in a temporary capacity, not to exceed February 4, 1997. Consequently, appellant was terminated at the expiration of his appointment.

² 5 U.S.C. § 8107.

applicable to all claimants. The Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.³

In the instant case, the August 7, 1997 schedule award was based on the July 21, 1997 report of the Office's medical adviser, who reviewed the May 30, 1997 findings of appellant's then treating physician, Dr. Brian E. Knapp. In his report, Dr. Knapp noted, among other things, that he had recently referred appellant to Dr. James A. Lilla, a Board-certified plastic surgeon, specializing in hand surgery. On June 9, 1997 the Office authorized Dr. Lilla's treatment and evaluation of appellant. Dr. Lilla examined appellant the following day and prepared a report dated June 10, 1997. Although the Office authorized Dr. Lilla's treatment and was aware that his report was forthcoming, the doctor's report apparently was not provided to the Office medical adviser when the case was forwarded for review on June 17, 1997. While the Office medical adviser's July 21, 1997 report specifically mentioned Dr. Knapp's May 30, 1997 report, the Office medical adviser did not reference Dr. Lilla's more recent report. No consideration was given to the measurements Dr. Lilla provided regarding flexion, extension and loss of grip strength; the latter of which suggest that appellant may be entitled to an increased impairment rating.⁴

In view of the Office's failure to consider all of the relevant medical evidence available at the time it issued its decision on August 7, 1997, the Board will remand the case to the Office for such further development and consideration of the evidence as may be necessary and for an appropriate final decision.⁵

Lastly, in response to appellant's contention that he should have continued to receive compensation for temporary total disability, we note that the Board has held that an employee cannot concurrently receive compensation under a schedule award and compensation for disability for work.⁶ In the instant case, the Office appropriately did not award compensation for temporary total disability during the same period of time appellant was to receive compensation pursuant to his schedule award.

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

⁴ Under the A.M.A., *Guides*, loss of grip strength is determined by a formula of abnormal strength subtracted from normal strength and then divided by normal strength to yield a percentage of strength loss index. The grip strength of the affected hand is compared with the grip strength of the opposite extremity, which is assumed to be normal. If both extremities are affected, the strength measurements are compared to the average normal strengths listed in Tables 31-33. A.M.A., *Guides*, pp. 64-65 (4th ed., 1993). Dr. Lilla reported lower values than those previously recorded by Dr. Knapp, which the Office medical adviser utilized in calculating appellant's impairment rating under the A.M.A., *Guides*.

⁵ See *William A. Couch*, 41 ECAB 548, 553 (1990) (the Board held that it is crucial that all relevant evidence which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office).

⁶ *Joseph R. Waples*, 44 ECAB 936, 939 (1993).

The decision of the Office of Workers' Compensation Programs dated August 7, 1997 is, hereby, set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
September 20, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member