

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY GENNARIO, sister of ANTHONY GENNARIO and
U.S. POSTAL SERVICE, SOUTH POSTAL ANNEX, Boston, MA

Docket No. 99-990; Submitted on the Record;
Issued June 22, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has any disability after November 6, 1980 related to his December 8, 1976 employment injury.¹

The case has been on appeal twice previously.² In a February 20, 1985 decision, the Board found that the Office of Workers' Compensation Programs had met its burden of proof in terminating appellant's compensation arising from the fracture of the terminal phalanx of the right middle finger. The Board, however, noted that subsequent medical evidence indicated that appellant had limitation of motion and atrophy of the right hand due to the employment injury. The case was remanded for further development of whether appellant had a permanent impairment of the right hand or a partial disability due to the employment injury. The Office subsequently found that appellant did not have a permanent impairment or a loss of wage-earning capacity due to the employment injury. In a September 8, 1997 decision, the Board found that a conflict in the medical evidence had arisen between Dr. Stephen W. Meagher, a Board-certified orthopedic surgeon specializing in hand surgery and Dr. John J. Duff, a Board-certified orthopedic surgeon, on their findings and their conclusions on whether appellant had a permanent impairment of the right arm and whether appellant had any disability, total or partial, due to the employment injury. The Board remanded the case for referral of appellant to an impartial medical specialist for an examination and opinion on whether he had any permanent impairment or disability due to the employment injury.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Lawrence F. Geuss, a Board-certified orthopedic surgeon. In a July 29, 1998

¹ Appellant died after his appeal was filed. The Board granted the request of appellant's attorney to substitute appellant's sister, his heir, in this appeal.

² Docket No. 95-758 (issued September 8, 1997); Docket No. 84-1076 (issued February 20, 1985). The history of the case is contained in the prior decisions and is incorporated by reference.

report, he stated that appellant had some loss in the range of motion in the right hand. Dr. Geuss indicated that appellant had sustained a fracture of the distal phalanx of the middle finger but found that he had a more measurable loss in the right index finger. He stated that appellant had 30 degrees of motion in the distal interphalangeal joint in all the fingers of the right hand. Dr. Geuss commented that it would be expected that one would recover from a fracture of the distal phalanx of the middle finger within three to four months. He added that even with some residual loss of mobility it would be expected that a person should regain good function in the right hand. Dr. Geuss indicated that a crush injury to the middle finger would not be related to a ganglion cyst in the palm of the hand or carpal tunnel syndrome in the right hand. He commented that, even if it were accepted that the ganglion and carpal tunnel syndrome were work related, which he did not, he would expect that appellant would have recovered within a few months of the carpal tunnel surgery and been able to return to work without restriction. Dr. Geuss concluded that appellant had not suffered any permanent impairment related to the crush injury to the right middle finger other than a slight displacement in the distal phalanx. He stated that, in relation to appellant's crush injury, he would have expected appellant to perform his duty as a mailhandler. Dr. Geuss commented that appellant would have been capable of working in a light-duty capacity without restriction within three months of the employment injury. He stated that measurements of the finger range of motion suggested a 15-degree loss of ability in the distal interphalangeal joints of the right hand when compared to the left hand and a 20-degree loss in the proximal interphalangeal joints of the right index finger. Dr. Geuss concluded appellant had a 20 percent loss of function in the right hand according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

The Office requested clarification from Dr. Geuss on whether he felt appellant's impairment extended from the middle finger into the hand and on when the residuals of appellant's injury reached maximum improvement. In a September 28, 1998 report, he stated that the 20 percent loss of function in the right hand was not related to the right middle finger alone. Dr. Geuss indicated that appellant flexed only to 30 degrees in the distal interphalangeal joints of all the fingers in the right hand, compared to 45 degrees in the distal interphalangeal joints in the left hand. He stated that the only finger injured in the employment injury was the right middle finger and that the injury to the middle finger did not cause the loss of function in the entire hand or affect the function of the other fingers. Dr. Geuss commented that the flexion he was able to measure was dependent on how much appellant would bend at the time of measurement and therefore would be somewhat subjective. He stated that a 15-degree loss of flexion in the right middle finger would translate to a 5 percent permanent impairment of the right hand. Dr. Geuss concluded that appellant was at an end point in his recovery from the employment injury.

In a November 3, 1998 memorandum, an Office medical adviser noted that Dr. Geuss reported that appellant was unable to flex the distal interphalangeal joints of his right hand beyond 30 degrees. He noted that the normal flexion of the distal interphalangeal joint was 70 degrees. He related Dr. Geuss' suggestion that appellant was not fully cooperative with the flexion maneuver, based on appellant's limited flexion in all his distal interphalangeal joints. The Office medical adviser concurred that the only ratable impairment was appellant's limitation in flexion in the distal interphalangeal joint of the right middle finger. He stated that this

limitation equaled a 21 percent finger impairment or a 4 percent impairment of the hand. The Office medical adviser indicated that the date of maximum improvement would have been September 7, 1976, six months after the ganglion surgery on appellant's hand.

In a December 5, 1998 decision, the Office denied appellant's claim for compensation on the grounds that the disability for the job he held at the time of the employment injury ceased no later than November 6, 1980. In an accompanying letter, the Office indicated that it had accepted appellant had a four percent permanent impairment of the right hand and was currently attempting to determine a way to pay the schedule award that would not be disadvantageous to him.

The jurisdiction of the Board extends to final decisions of the Office.³ The only final decision before the Board is the December 5, 1998 decision denying appellant's claim for compensation after November 6, 1980. While the Office has acknowledged that appellant had a four percent permanent impairment of the right hand, it has not issued a formal decision setting forth a schedule award to appellant for that impairment. Therefore, the issue of appellant's permanent impairment of the right hand is not before the Board at this time.

The Board finds that appellant had no disability after November 6, 1980 causally related to the December 8, 1976 employment injury.

Dr. Geuss stated that, in regard to appellant's disability arising from the employing establishment, he would have expected appellant to return to a light-duty position without restriction within three months of the employment injury. He concluded that appellant would have been able to return to his position as a mailhandler, even with the crush injury. Dr. Geuss' report therefore shows that appellant's disability due to the December 8, 1976 employment injury ceased before November 6, 1980, when the Office terminated appellant's compensation. In situations when there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴ Dr. Geuss had an accurate history of appellant's employment injury and gave findings and rationale in support of his conclusion that appellant's disability due to the employment injury had ceased. His report is therefore entitled to special weight and, in the circumstances of this case, constituted the weight of the medical evidence.

³ 20 C.F.R. § 501.2(c).

⁴ *James P. Roberts*, 31 ECAB 1010 (1980).

The decision of the Office of Workers' Compensation Programs, dated December 5, 1998, is hereby affirmed.

Dated, Washington, D.C.
June 22, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member