

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TROY C. PALMER and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Hines, IL

*Docket No. 98-2615; Submitted on the Record;
Issued March 16, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she has more than a 41 percent permanent impairment of her right ring finger for which she received schedule awards.

The Board finds that appellant did not meet her burden of proof to establish that she has more than a 41 percent permanent impairment of her right ring finger for which she received schedule awards.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.³ Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the*

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

Evaluation of Permanent Impairment (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order⁶ on April 27, 1998 which set aside the April 24, 1996 decision of the Office and remanded the case to the Office for further development of the medical evidence. The Board directed the Office to refer the case to a specialist in order to evaluate whether appellant has more than a 41 percent permanent impairment of her right ring finger for which she received schedule awards.⁷ The Board noted that the Office medical consultant had properly evaluated appellant's right ring finger impairment with respect to limitation of motion but had not adequately supported his assessment that appellant was entitled to a 20 percent impairment rating due to pain and weakness. The Board indicated that it did not appear that the appropriate sensory deficit and weakness testing had been conducted in accordance with the appropriate standards of the A.M.A., *Guides* and remanded the case to the Office for further evaluation of appellant's permanent impairment to be followed by an appropriate decision regarding whether she had more than a 41 percent permanent impairment of her right ring finger. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

Upon remand to the Office, appellant and the case record were referred to Dr. Michael Jablon, a Board-certified orthopedic surgeon, for examination and evaluation. In a report dated June 25, 1998, Dr. Jablon reported the findings of his examination on that date which included the performance of appropriate sensory deficit and weakness testing.⁸ In a report dated July 13, 1998, an Office medical consultant reviewed the findings of Dr. Jablon and applied the standards of the A.M.A., *Guides* to determine that appellant has a 16 percent permanent impairment of her right ring finger. By decision dated July 22, 1998, the Office determined that appellant had not met her burden of proof to show that she has more than a 41 percent permanent impairment of her right ring finger.⁹

The Board notes that the Office medical consultant properly evaluated the extent of appellant's right ring finger impairment according to the relevant standards of the A.M.A., *Guides*. The Office medical consultant correctly determined that appellant had a 16 percent

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁶ Docket No. 96-1940.

⁷ The Office accepted that on October 20, 1992 appellant sustained an employment-related fracture and post-traumatic arthritis of her right ring finger. By award of compensation dated August 11, 1993, the Office granted appellant a schedule award for a 22 percent permanent impairment of her right ring finger and, by award of compensation dated April 24, 1996, the Office granted her a schedule award for an additional 19 percent permanent impairment of her right ring finger. The Office had based its assessment of appellant's total permanent impairment on the April 3, 1996 report of an Office medical consultant who evaluated the findings of Dr. Elaine Adams, a Board-certified internist, to whom the Office referred appellant.

⁸ See A.M.A., *Guides* 15-22.

⁹ The Office did not disturb appellant's schedule awards for a 41 percent permanent impairment of her right ring finger and indicated that she continued to be entitled to medical benefits for the effects of her injury.

impairment due to limitation of motion based on a 5 percent impairment rating for 60 degrees of distal interphalangeal joint flexion; a 6 percent rating for 90 degrees of proximal interphalangeal joint flexion; and a 5 percent rating for 0 degrees of metacarpophalangeal joint extension.¹⁰ The Office medical consultant also correctly determined that appellant was not entitled to an impairment rating for sensory deficit or weakness. With respect to his evaluation of Dr. Jablon's findings, he stated:

“Physical examination demonstrated intact two point discrimination and a well-healed nontender longitudinal scar over the dorso-ulnar aspect of the middle phalanx. Grip strength was markedly decreased on the right. However, the two point, one point, and lateral pinch, which should have been normal as these fingers were not involved in the original injury, was also markedly decreased bringing into question the validity of the grip strength measurement. Therefore, no [partial permanent impairment] will be awarded for this discrepancy.”

* * *

“When claimant was asked to make a fist, there was a 2 centimeter flexion deficit. However, when inspecting the range of motion above, at most, this deficit should have been a couple of millimeters. Thus, the validity of the physical exam[ination] is again questioned secondary to lack of effort on the claimant's behalf.”

As the report of the Office medical consultant provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.¹¹ Therefore, the Office correctly determined that appellant did not show she has more than a 41 percent permanent impairment of her right ring finger for which she received schedule awards.

¹⁰ See A.M.A., *Guides* 32-34. Dr. Jablon had calculated an 11 percent impairment rating because he neglected to include a rating for limitation of metacarpophalangeal joint extension.

¹¹ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

The decision of the Office of Workers' Compensation Programs dated July 22, 1998 is affirmed.

Dated, Washington, D.C.
March 16, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member