U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL WHITE and U.S. POSTAL SERVICE,
BUSTLETON STATION, Philadelphia, PA

Docket No. 00-2636; Submitted on the Record;
Issued July 5, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a five percent permanent impairment of his left hand, for which he received a schedule award.

This is the second time this case has been before the Board on appeal. In a previous decision dated March 25, 1999, the Board set aside the Office of Workers' Compensation Programs' hearing representative's January 30, 1997 decision, denying appellant's claim for an additional schedule award because the hearing representative improperly relied on the impartial medical opinion of Dr. Joseph A. Fabiani, a Board-certified orthopedic surgeon. The facts of the case are set out in that decision.

On remand, the Office referred appellant to Dr. Lawrence H. Schneider, a Board-certified orthopedic surgeon, for an impartial medical examination, by letters dated April 30 and August 26, 1999. By letter dated April 30, 1999, the Office advised him of the referral.

Dr. Schneider submitted a September 15, 1999 report, providing a history of appellant's accepted February 25, 1992 employment injury and medical treatment. He provided his findings on physical and objective examination. Dr. Schneider's range of motion findings revealed that the metacarpophalangeal (MP) joint was 0/90, the proximal interphalangeal (PIP) joint was 0/90 and the distal interphalangeal (DIP) joint was 0/50. He diagnosed a crush injury of the left index finger with a compound fracture of the distal tuft of the finger with minimal restriction of motion of the PIP and DIP joint of the left index finger and hypersensitivity distal portion of the left index finger. Dr. Schneider opined that appellant did not have 100 percent recovery of function in the index finger and that he had some small percentage of impairment of the index finger based on the minimal restriction of motion in the finger and giving appellant the benefit of the complaint of hypersensitivity in the tuft. He opined:

> "When considering the hypersensitivity reported in the small portion of the index finger as well as the minor restriction of motion at the PIP and DIP joints, I am surprised to find that the [American Medical Association], [*G*]*uides to the*

> *Evaluation of Permanent Impairment* reward a 25 percent loss of function of the index finger which shall remain permanent. This translates into a two and one-half percent loss of use on a permanent basis of his left index finger…."[1]

The Office requested that an Office medical adviser review Dr. Schneider's report and provide the percentage of permanent impairment, if any and the date of maximum medical improvement.

On November 1, 1999 the Office medical adviser responded:

> "Since the conflict of medical opinion according to [the Board] is between [Dr. David Weiss, a Board-certified osteopath] and myself, I cannot answer except to quote the referee.
>
> "Dr. Schneider's opinion is 25 percent impairment of the left index finger.
>
> "Date of maximum medical improvement is September 15, 1999 date of Dr. Schneider's opinion."

By decision dated November 3, 1999, the Office found that appellant was not entitled to an additional schedule award. The Office found that a 25 percent impairment to the left index finger was less than the five percent impairment of the left hand previously awarded appellant. Appellant, through his counsel, requested an oral hearing by letter dated November 9, 1999.

In a May 11, 2000 decision, the hearing representative affirmed the Office's November 3, 1999 decision.

The Board finds that this case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act[2] and its implementing regulations[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

In this case, the Office relied on the impartial medical opinion of Dr. Schneider that appellant did not have more than a five percent impairment of the left hand. His opinion,

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[1] It appears that Dr. Schneider mistakenly stated that appellant's 25 percent impairment of the left index finger translated into a 2½ percent impairment of the left index finger rather than a 2½ percent impairment of appellant's left hand.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

however, is inadequate to resolve the conflict in the medical opinion evidence. Dr. Schneider failed to indicate which tables he used in the fourth edition of the A.M.A., *Guides*, to determine that appellant had a 25 percent impairment of the left index finger, which he stated translated into a 2½ percent impairment of the left hand. As Dr. Schneider did not use the A.M.A., *Guides* appropriately, his opinion on the extent of appellant's permanent impairment, is of diminished probative value and is insufficient to resolve the conflict in the medical evidence.

When the Office secures an opinion from an impartial specialist and the opinion of the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report. However, if the impartial specialist's statement of clarification or elaboration is not forthcoming or if the physician is unable to clarify or elaborate on his original report or if the supplemental report is also vague, speculative or lacks rationale, the Office must refer appellant to another impartial specialist for a rationalized medical report on the issue in question.[4] The case must, therefore, be remanded for the Office to request from Dr. Schneider a clarification of his report. After such further development as it may find necessary the Office should issue a *de novo* decision on appellant's permanent impairment of the left hand.

The May 11, 2000 and November 3, 1999 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
July 5, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] *Harold Travis*, 30 ECAB 1071 (1979).