

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JACKIE L. HANEY and DEPARTMENT OF THE ARMY,  
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 00-2301; Submitted on the Record;  
Issued June 4, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof in establishing that he is entitled to a schedule award for his accepted condition of foreign body right hand; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On April 14, 1999 appellant, a 44-year-old tractor operator, filed a claim alleging that he was injured when a tree limb punctured his right hand. The Office accepted his claim for foreign body right hand and authorized surgical procedures. Appellant stopped work on April 13, 1999 and returned on May 11, 1999.

On June 28, 1999 appellant filed a claim for a schedule award. He submitted a progress note prepared by Dr. Michael Pappas, a general surgeon, who indicated that appellant developed an abscess on his right hand and underwent surgery to drain the abscess.

By letter dated February 8, 2000, the Office requested additional medical evidence and advised appellant of the type of medical evidence needed to establish his claim.

In response, appellant submitted various progress notes and reports from Dr. Pappas, who noted an initial hand surgery on April 14, 1999 for irrigation, debridement and removal of a foreign body and a second surgery on April 29, 1999 for an infection of the wound.

Subsequently, Dr. Pappas stated that appellant could return to full-time duty but was required to wear a glove on his right hand. A progress note dated July 9, 1999 stated that appellant developed a large mass in the middle of his right hand. Appellant underwent surgery on July 16, 1999 to remove fragments of tree bark which still remained in his hand from the April 13, 1999 employment injury. Dr. Pappas indicated on July 28, 1999 that appellant was healing properly and had full range of motion of his right hand.

The Office asked Dr. Pappas to evaluate the extent of any permanent impairment arising from appellant's accepted employment injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*). In a report dated November 17, 1999, Dr. Pappas measured the interphalangeal joint range of motion on the right at 80, 80, and 87 degrees and 88, 90, 93 degrees on the left. The long finger was measured at 92, 90 and 90 degrees on the right and 103, 106 and 105 degrees on the left. The distal interphalangeal joint of the right index finger was 61 and the left, 62. The long finger measured 74 and 70 on the right, 62 and 70 on the left. Dr. Pappas indicated the distal interphalangeal (DIP) measurements were too symmetrical to yield any percentage of impairment.

Using the third edition of the A.M.A., *Guides*, Dr. Pappas found a 6 percent impairment per Figure 25. He indicated that the maximum loss of grip strength would be assigned to Table 14, revealing a grade of 25 percent; mild weakness was assigned a grade of 15 percent under Table 11, number 2 of the A.M.A., *Guides*. He multiplied 15 percent by 25 percent which yielded a rounded impairment of 4 percent. Dr. Pappas combined the 6 percent impairment with 4 percent impairment and determined appellant had a 10 percent impairment of the right hand. He converted the hand impairment to an upper extremity impairment of 9 percent, from Table 2, page 19 of the A.M.A., *Guides*.

The Office referred appellant to Dr. Barry Green, a Board-certified orthopedic surgeon, for an evaluation of the degree of permanent impairment due to appellant's work-related condition. Dr. Green, in his report dated March 1, 2000, indicated that appellant reached maximum medical improvement on March 1, 2000. He noted that flexion, abduction, internal and external rotation of the shoulder were normal; impingement sign was negative bilaterally; flexion, extension, pronation and supination of the elbows were normal bilaterally; and flexion, extension, radial and ulnar deviation of the wrists were normal bilaterally.

The hand/finger motion test revealed that appellant was able to make a tight fist, extend fingers, spread fingers apart and bring fingers together; appellant could touch the tip of the thumb to the pad at the base of the little finger and to the tips of all other fingers. Abduction, opposition and adduction of the thumbs were normal. The upper strength test indicated appellant could, against resistance, abduct the shoulders, flex and extend the elbows and wrists and grip with both hands with no indication of scapular elevation, retraction or shoulder protraction.

The sensory examination revealed normal upper extremities, with no decreased sensation or hypersensitivity in any dermatome. The upper reflex examination revealed the biceps, brachioradialis and tricep reflexes were normal and symmetric. Tinel's sign and Phalen's test were negative bilaterally. The upper arm and forearm circumferences were bilaterally equal. Dr. Green noted that appellant had no specific disorders, his range of motion was normal and that he had no motor or sensory deficits.

Based on Dr. Green's report, in a decision dated March 28, 2000, the Office determined appellant was not entitled to a schedule award impairment for his right hand.

In letters dated April 3 and May 9, 2000 appellant requested reconsideration of the Office's decision dated March 28, 2000. He did not submit additional evidence.

By decision dated May 12, 2000, the Office denied appellant's application for review without conducting a merit review of the claim.

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

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> specifies 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 of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.<sup>2</sup> For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, as the standard for determining the percentage of permanent impairment and the Board has concurred in such adoption.<sup>3</sup>

The Board finds that, while Dr. Green did not find a ratable impairment, it is not clear to what extent he considered the medical evidence of record in reaching his opinion. For example, Dr. Green did not refer to or distinguish Dr. Pappas's specific findings with regard to loss of grip strength and weakness. Dr. Pappas' reports are likewise deficient as the doctor did not use the proper edition of the A.M.A., *Guides* in rating appellant's permanent impairment.<sup>4</sup> Moreover, he reported some clinical findings that differ from those reported by Dr. Green.

In view of the disparity in the evaluations of Drs. Pappas and Green and the failure of Dr. Pappas to use the proper edition of the A.M.A., *Guides*, the Office should have referred the matter to an Office medical adviser to determine whether appellant has a ratable impairment in either the right hand or the right arm.<sup>5</sup>

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>6</sup> Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>3</sup> *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961), *Francis John Kilcoyne*, 38 ECAB 168 (1987).

<sup>4</sup> The Office began using the fourth edition of the A.M.A., *Guides* effective November 1, 1993. FECA Bulletin 94-4 (issued November 1, 1993).

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims* Chapter 2.808.6(d) (March 1995) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

<sup>6</sup> *John W. Butler*, 39 ECAB 852 (1988).

Therefore, the Board finds that the case must be remanded to the Office for referral of the matter to an Office medical adviser, consistent with Office procedures, to determine whether appellant sustained any permanent impairment of the right upper extremity in accordance with the A.M.A., *Guides*. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.<sup>7</sup>

The May 12 and March 28, 2000 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, DC  
June 4, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member

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<sup>7</sup> In view of the Board's disposition, it is not necessary to address whether the Office properly denied a merit review of appellant's claim.