

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL STURDIVANT and DEPARTMENT OF THE ARMY,  
Fort Dix, NJ

*Docket No. 01-412; Submitted on the Record;  
Issued February 19, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has more than a one percent permanent impairment to his left hand.

The Office of Workers' Compensation Programs accepted that appellant sustained a left fifth finger fracture in the performance of duty on January 6, 1988. By decision dated January 17, 1995, the Office issued a schedule award for a 12 percent permanent impairment of the fifth finger or 1.8 weeks of compensation. In a decision dated June 6, 1995, an Office hearing representative remanded the case. By decision dated August 24, 1995, the Office found appellant had no more than a 12 percent impairment to the finger. In a decision dated February 5, 1996, an Office hearing representative again remanded the case. By decision dated June 27, 1996, the Office issued a schedule award for a one percent permanent impairment to the left hand or 2.44 weeks.

In a decision dated September 15, 1997, an Office hearing representative remanded the case for further development. In a decision dated January 21, 1998, the Office found that appellant had no more than a one percent impairment to the hand. By decision dated December 14, 1998, the case was again remanded by an Office hearing representative. In a decision dated March 18, 1999, the Office found no more than a one percent impairment to the left hand. By decision dated January 13, 2000, an Office hearing representative remanded the case for further development.

By decision dated March 13, 2000, the Office found that appellant had no more than a one percent permanent impairment to the left hand. In a decision dated August 28, 2000, an Office hearing representative affirmed the schedule award determination.

The Board finds that appellant has not established more than a one percent permanent impairment to the left hand.

Section 8107 of the Federal Employees' Compensation 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.<sup>1</sup> 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 has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>2</sup>

As the history of the case suggests, there has been considerable development of the medical evidence in this case. In this regard the Board notes that an Office hearing representative, in the September 15, 1997 decision, finds a conflict in the medical evidence between attending physician Dr. David Weiss, an osteopath, and Dr. Roy Friedenthal, an orthopedic surgeon. The hearing representative also noted that "neither physician has provided any type of medical rationale to support their stated conclusions." The Board concurs with this assessment and finds that the medical evidence was not of sufficient probative value to create a conflict under 5 U.S.C. § 8123(a). When the Office subsequently referred appellant to Dr. Roy Gorin, an osteopath, it is considered a second opinion referral.<sup>3</sup>

The Board finds that the February 16, 2000 report of Dr. Gorin constitutes the weight of the medical evidence, since this is the only report of record that adequately addresses all of the impairment issues. The previous medical reports had raised questions as to impairments to the hand from loss of motion, sensory loss or pain, and weakness. Dr. Gorin reviews all of the medical evidence, provides results on examination and clearly explains how the impairment rating under the A.M.A., *Guides* was calculated. He found that under Figure 23, appellant's zero degrees of extension resulted in a five percent finger impairment.<sup>4</sup> This results in a one percent impairment to the hand under Table 1.<sup>5</sup> Dr. Gorin found no other impairment based on loss of range of motion. With respect to sensory loss or pain, he provided results on examination indicating no objective findings and he found no basis for impairment under the A.M.A., *Guides*. Dr. Gorin also indicated that grip strength was assessed with a Jamar Dynamometer in accordance with the A.M.A., *Guides* and no weakness was found.

The Board finds that Dr. Gorin provided a reasoned medical report that addresses the issues presented and provides an opinion that appellant had a one percent impairment to the left hand. Appellant has not submitted any current medical evidence providing a contrary opinion. Accordingly, the Board finds that appellant has not established more than a one percent hand impairment in this case.

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>3</sup> See Mary L. Henninger, 52 ECAB \_\_\_\_ (Docket No. 00-552, issued June 20, 2001).

<sup>4</sup> A.M.A., *Guides* at 34, Figure 23.

<sup>5</sup> *Id.* at 18, Table 1.

The decisions of the Office of Workers' Compensation Programs dated August 28 and March 13, 2000 are affirmed.

Dated, Washington, DC  
February 19, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member