

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. TAYLOR and DEPARTMENT OF THE NAVY,
NAVAL AVIATION DEPOT, Cherry Point, NC

*Docket No. 02-591; Submitted on the Record;
Issued July 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has a permanent impairment of the upper extremities causally related to his accepted employment injury.

On May 22, 2000 appellant, then a 65-year-old retired advance composite fabricator training leader, filed an occupational disease claim alleging that he sustained an aggravation of pain and swelling in his hands, wrist, elbows and left knee due to factors of his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for an aggravation of tendinitis in both hands.

On November 10, 2000 appellant filed a claim for a schedule award.

By decision dated October 19, 2001, the Office found that appellant did not have a ratable permanent impairment due to his accepted employment injury.

The Board finds that appellant has not established that he has a permanent impairment of his upper extremities causally related to his accepted employment injury.

The schedule award provisions of the Federal Employees' Compensation Act,¹ and its implementing federal regulations,² 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 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.³ Office procedures

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁴

In support of his schedule award claim, appellant submitted impairment ratings dated December 13, 2000 for his wrists, shoulders, elbows, and fingers from his attending physician, Dr. David D. Fraser, a Board-certified internist, who found that appellant had a five percent bilateral upper extremity impairment due to pain or weakness. He further found that appellant had not yet reached maximum medical improvement.⁵ Dr. Fraser did not address whether appellant's upper extremity impairment was causally related to his accepted employment injury and thus his report is insufficient to establish appellant's claim that he is entitled to a schedule award.⁶

Dr. Fraser also provided impairment evaluations dated April 3, 2001, in which he concluded that appellant had a 30 percent impairment of the upper extremities. However, in reaching his impairment determination, Dr. Fraser did not reference the specific tables and pages of the A.M.A., *Guides* he relied upon in reaching his conclusions or provide medical rationale explaining how appellant's accepted employment injury of an aggravation of bilateral tendinitis resulted in the permanent impairment of the upper extremities.⁷ Thus, his opinion is of diminished probative value on the issue of whether appellant has a ratable impairment for purposes of a schedule award.

Furthermore, Dr. Robert M. Moore, a Board-certified orthopedic surgeon and Office referral physician, found that appellant had no permanent impairment due to the accepted employment injury. In a report dated July 12, 2001, Dr. Moore listed detailed findings on examination, including range of motion findings for appellant's shoulders, elbows, wrists and fingers. He diagnosed bilateral hand pain secondary to rheumatoid arthritis and mild osteoarthritis. Dr. Moore opined that appellant had reached maximum medical improvement on June 27, 2000 and concluded that he had no impairment of the shoulders, elbows, wrists or thumbs but had impairments of the fingers of both hands.

Consequently, as the medical evidence is insufficient to establish that appellant sustained a permanent impairment to a scheduled member as a result of his work injury, the Board finds that the Office properly denied appellant's claim for a schedule award.

⁴ See FECA Bulletin No. 01-5, issued January 29, 2001.

⁵ The second opinion physician, upon whom the Office based its finding that appellant was not entitled to a schedule award, found that appellant reached maximum medical improvement on June 27, 2000.

⁶ In a report dated September 13, 2000, Dr. Fraser diagnosed, *inter alia*, rheumatoid arthritis, degenerative arthritis and degenerative joint disease of the knee. He did not discuss appellant's accepted employment injury.

⁷ It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments are to be included; see *Donald A. Myers*, 22 ECAB 49 (1970). The medical evidence submitted in this case, however, is not sufficient to establish any permanent impairment of the upper extremities due to the accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated October 19, 2001 is affirmed.

Dated, Washington, DC
July 17, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member