U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA C. WALKER and DEPARTMENT OF DEFENSE, DEFENSE GENERAL SUPPLY CENTER, Richmond, VA

Docket No. 02-2120; Submitted on the Record;
Issued February 3, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant is entitled to an increased schedule award.

In the prior appeal of this case,[1] the Board found that appellant had no more than a 26 percent permanent impairment of her right hand, for which she received a schedule award. The facts of this case as set forth in the Board's prior appeal are hereby incorporated by reference.

Appellant filed a claim for an increased schedule award. To support her claim, she submitted a June 29, 2001 report from her attending physician, Dr. Karan V. Prakash, who reviewed and confirmed occupational therapy measurements obtained on June 25, 2001. Dr. Prakash reported as follows:

"There is impingement (sic) of all the fingers. She does have impairment in active flexion although passively she has much motion.

"By A[merican] M[edical] A[ssociation], [*Guides to the Evaluation of Permanent Impairment*], upper extremity impairment based on limitation of motion of [the] thumb, index finger and middle finger, ring finger and small finger [illegible] impairment of 49 percent."

Dr. Prakash added:

"[Appellant] has lost 49 percent of her right hand as I noted in my office notes. Her hand is only getting worse NOT better. Patient's hand looks deformed. Do not understand what other information is needed concerning the range of motion. All rates are denoted on attached pages."

The occupational therapy measurements showed active extension/flexion of the right middle finger as follows: MP (metacarpophalangeal) -26/54; PIP (proximal interphalangeal) --

[1] Docket No. 98-998 (issued October 21, 1999).

13/17; DIP (distal interphalangeal) -- 4/13. Active extension/flexion of the right thumb measured as follows: MP -- 18/44; IP +29/15. Impairment of the right middle finger was reported to be 78 percent or 16 percent of the hand. Impairment of the right thumb was reported to be 7 percent or 3 percent of the hand.

On January 8, 2002 an Office of Workers' Compensation Programs medical adviser reviewed the case and did not agree that the record supported an increase in the schedule award.

The Office determined that a conflict in medical opinion existed between Dr. Prakash and the Office medical adviser. To resolve the conflict, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Kennedy S. Daniels, a Board-certified orthopedic surgeon.

In a report dated June 13, 2002, Dr. Daniels related appellant's history and his findings on physical examination:

> "She holds her hand in a very stiff manner. There is some prominence and swelling about the MP joint of the long finger. When asked to straighten her hand, she was able to do this minimally, but after some coaxing and gentle support she was able to fully extend all of the digits of her right hand. I then asked her to flex her fingers as far as possible and again she flexed her fingers minimally, but I was able to eventually get most of her digits through full ROM [range of motion]. She did not have any triggering of any digits. There was no warmth. She had intact sensation through all of her digits. There is a dorsal incisional scar over the third MP joint, but I do not see any scars on the volar surface of her hand. She did appear to have some loss of motion in the long finger itself with 60 degrees of motion at the DIP joint, 80 degrees at the PIP and 80 degrees at the MP joint. She has grip strength of 65 on the left side and 20 on the right."

Dr. Daniels noted that x-rays revealed some moderate loss of joint space in the MP joint of the long finger with no evidence of previous fracture. He reviewed appellant's medical record and reported the following impression:

> "This patient had an unknown injury to her long finger. It is not certain in my review of the records whether she ever really had a fracture. She does certainly have some narrowing of the MP joint of the long finger, which would likely cause some symptoms. Unfortunately, she was very hesitant to allow ROM of her hand and it is difficult to be certain about her true ROM. After carefully examining her, however, I feel that she probably has no true contracture of her hand with the exception of some mild loss of motion in the long finger itself. I have filled out a form that states the ROM of her thumb and long finger because these are the areas on which surgery was performed. I did not find any definite loss of motion in her thumb, but in her long finger I found that she has only 60 degrees of flexion at the DIP joint, 80 degrees at the PIP, and 80 degrees at the MP joint. There, of course, is no ROM recordable for the CMC joint of the long finger. The loss of motion that she has objectively would give her an 18 percent digital impairment, which is

> a 4 percent hand impairment, a 4 percent total upper extremity impairment and a 2 percent whole person impairment, as outlined in the [A.M.A.,] *Guides*, [f]ifth [e]dition. Please see the chart included. I do feel that this impairment rating relates to her work injury, as I have no evidence of any other reason for her MP joint to loss joint space other than the injury itself and the surgery that she underwent there."

In a decision dated July 16, 2002, the Office denied appellant's claim for an increased schedule award. The Office found that the opinion of the referee medical specialist, Dr. Daniels, carried special weight and established that appellant was not entitled to an increased schedule award.

The Board finds that appellant has not met her burden to establish that she is entitled to an increased schedule award.

A claimant seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[3] After receiving a schedule award for a 26 percent permanent impairment of her right hand, appellant filed a claim for an increased award. She therefore has the burden of establishing that her impairment is greater than the 26 percent she previously received.

The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[4]

To support her claim, appellant submitted occupational therapy measurements adopted by her attending physician, Dr. Prakash. According to Figure 16-15, page 457, of the A.M.A., *Guides*, -18 degrees active extension of the thumb MP joint represents a thumb impairment of 1 percent; 44 degrees active flexion represents an impairment of 2 percent. According to Figure 16-12, page 456, 29 degrees active extension of the thumb IP joint represents no impairment of the thumb; 15 degrees active flexion represents an impairment of 4 percent. Impairment values contributed by each thumb unit of motion are added to determine the total thumb impairment due to abnormal motion.[5] Appellant thus has a total right thumb impairment of seven percent.[6]

According to Figure 16-25, page 464, -26 degrees active MP extension represents a middle finger impairment of 12 percent; 54 degrees active flexion represents an impairment of

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[4] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the fifth edition of the A.M.A., *Guides*, which was published in 2001.

[5] A.M.A., *Guides* 460 (5th ed. 2001).

[6] The occupational therapy measurements adopted by Dr. Prakash give no estimate of thumb impairment due to radial abduction, adduction or lack of opposition.

22 percent. Appellant has a right middle finger impairment of 34 percent due to decreased motion of the MP joint.

According to Figure 16-23, page 463, -13 degrees active PIP extension represents a middle finger impairment of 3 percent; 17 degrees of active flexion represents an impairment of 48 percent. Appellant has a right middle finger impairment of 51 percent due to decreased motion of the PIP joint.

According to Figure 16-21, page 461, -4 degrees active DIP extension represents no impairment of the middle finger; 13 degrees of active flexion represents an impairment of 31 percent. Appellant has a right middle finger impairment value of 31 percent due to decreased motion of the DIP joint.

When one or more finger joint is involved, the impairment values for each are combined using the Combined Values Chart at page 604.[7] Impairments of 34 percent, 51 percent and 31 percent combine for a total right middle finger impairment of 78 percent.

When two or more digits are involved, as in this case, total digit impairment is calculated for each and converted into a hand impairment using Table 16-1, page 438, then added to obtain the total hand impairment.[8] A total thumb impairment of seven percent represents a hand impairment of three percent. A total middle finger impairment of 78 percent represents a hand impairment of 16 percent. Appellant has a 19 percent impairment of her right hand due to her accepted right middle finger and thumb conditions.

Because the occupational therapy measurements adopted by her attending physician fail to support that she has more than a 26 percent impairment of her right hand due to her accepted right thumb and middle finger conditions, appellant has failed to establish that she is entitled to an increased schedule award. The Board will affirm the denial of appellant's claim on these grounds.[9]

[7] A.M.A., *Guides* at 460.

[8] *Id*. at 465.

[9] Because appellant failed to make a *prima facie* claim for an increased award, the additional development of the medical evidence undertaken by the Office was superfluous and need not be reviewed to decide the issue on appeal.

The July 16, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
February 3, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member