

**United States Department of Labor  
Employees' Compensation Appeals Board**

\_\_\_\_\_  
**AYANLE A. HASHI, Appellant**

**and**

**AGENCY FOR INTERNATIONAL  
DEVELOPMENT, FIELD SUPPORT UNIT,  
Mogadishu, Somalia, Employer**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 04-1620  
Issued: December 27, 2004**

*Appearances:*  
*P. Chinedu Nwaneri, Esq., for the appellant*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On June 9, 2004 appellant filed a timely appeal of a March 11, 2004 decision of the Office of Workers' Compensation Programs, which granted compensation as of April 14, 1998 to be paid under 5 U.S.C. § 8137 pursuant to the applicable law of Somalia. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merit issues in this case.

**ISSUE**

The issue is whether the Office properly determined that appellant was entitled to \$3,904.48 in compensation pursuant to 5 U.S.C. § 8137.

**FACTUAL HISTORY**

On October 4, 2000 appellant filed a claim for injuries sustained while in Somalia on December 14, 1990. Appellant indicated that on December 14, 1990 he was a driver for the employing establishment and suffered gunshot wounds to his left and right arms from assailants attempting to steal the employing establishment motor vehicle. Appellant's supervisor reported

on the claim form that she was notified by radio on December 14, 1990 that appellant had received gunshot wounds and was taken to a local hospital.

In response to a request for medical evidence with respect to his claim, appellant submitted reports regarding treatment he received in the United States commencing in 1998. In a report dated April 13, 1998, Dr. Thomas Conner, an orthopedic surgeon, indicated that appellant underwent surgery of the right elbow and right forearm. In a report dated November 5, 1998, he stated that appellant had problems secondary to the forearm surgery and also had difficulties with his left hand due to an old index finger injury. Dr. Conner reported that as a result of these injuries appellant “has been, and continues with, work restrictions since April 14, 1998.”

In a report dated April 29, 1999, Dr. Matthew Putnam, an orthopedic surgeon, provided a history of gunshot wounds with recovery of fair function of the right upper extremity, although appellant was concerned about an inability to rotate his forearm. He provided results on examination and diagnosed status post right forearm gunshot wound, and unclear nerve dysfunction of the right arm possibly accounting for weakness of grip and strength.

The Office accepted the claim for gunshot wound, right forearm and left upper arm, and a fractured right forearm. In a letter dated June 8, 2001, appellant’s representative indicated that at the time of injury appellant was a Somali citizen. He indicated that appellant had received inadequate medical treatment and came to the United States at the end of 1993, where he had difficulty obtaining employment because his right arm was barely useable. Appellant did not have medical reports prior to 1998 as he was in a refugee camp in Somalia and then was without medical care in the United States until he received government assistance.

In a decision dated August 24, 2001, the Office determined that the medical evidence was insufficient to establish a period of disability causally related to the employment injuries. Appellant requested an oral hearing, which was held on April 23, 2002. Appellant’s representative indicated that he was in a refugee camp in Kenya from November 1991 to August 1993, came to the United States and worked in unskilled labor jobs from 1993 to 1997. The representative stated that appellant first sought treatment in the United States on October 17, 1997, had not worked since the surgery and then stated, “perhaps for that reason I should amend the claim to ask for compensation from ... October 17, 1997.”

Appellant submitted an undated report on August 2, 2002 from Dr. Ralph Bovard, a specialist in occupational medicine. He provided a history and results on examination and opined that appellant had a 48 percent permanent impairment to his right arm based on loss of grip strength and loss of range of motion. He concluded that appellant had reached maximum medical improvement.

By decision dated August 12, 2002, the hearing representative remanded the case for further development of the medical evidence. The hearing representative directed the Office to refer the case to a physician for a reasoned opinion on the extent of appellant’s disability as of October 1997 from the work injury, as well as a full description of any right arm impairment.

The Office referred appellant to Dr. Douglas A. Becker, an orthopedic surgeon, for evaluation. In a report dated January 22, 2003, Dr. Becker provided a history and results on

examination. He indicated that appellant underwent right forearm osteotomy on July 1, 1999 and plate removal of the right proximal radius on December 31, 2002. Dr. Becker diagnosed right forearm synostosis status post take down and proximal osteotomy for right forearm gunshot wound, and left upper arm gunshot wound. With respect to disability, Dr. Becker stated:

“There is no history of preexisting disease and the accident is consistent with a synostosis and malunion requiring treatment as a result of the December 14, 1990 accident. This is a permanent injury and permanent disability. The subject is expected to have intermittent discomfort and stiffness of the right forearm as a result of this injury and require treatment. Permanent disability extended from the time of injury on December 14, 1990 through the current time as they were permanent.... Temporary total disability would have resulted after the need for surgery as a result of the December 14, 1990 accident for a period of three months after each surgery with no use at all of the right upper extremity. He does have permanent disability as well, however, that was ongoing with restrictions since December 14, 1990.”

Dr. Becker also opined that appellant had a permanent impairment to the right arm under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001). Dr. Becker did not identify specific tables. He opined that the radial nerve sensory loss was 1.25 percent impairment, based on 5 percent of 25 percent. Dr. Becker further reported: “For the loss of elbow pronation and supination, permanent disability is as follows IS=50 percent, IP=20 percent, Total 705. Prone and supination is 40 percent of elbow function, and his elbow is 70 percent of the upper extremity function. 40 percent x 70 percent x 70 percent = 19.6 percent.”

By decision dated March 11, 2004, the Office found that the medical evidence from Dr. Conner and Dr. Bovard supported temporary total disability from April 14, 1998 to April 19, 2002, with maximum medical improvement on April 20, 2002. The Office found that, as appellant was not a citizen or resident of the United States, section 8137 of the Act provided the basis for determining compensation in this case, and Office procedures provided that all benefits must be paid under the same structure and in the lesser amount. The Office found that appellant’s pay rate on the date of injury was \$1,134.35 per year, or \$21.81 per week. The Office stated that under the Somali Ministry of Health, Veterinary Services and Labor Law appellant would be entitled to \$3,361.00 for temporary total disability from April 14, 1998 to April 19, 2002, and \$544.48 for a 48 percent permanent impairment of the right arm, totaling \$3,904.48. The Office found that Federal Employees’ Compensation Act benefits would total \$5,854.06, and the Office concluded that appellant should be paid a lump sum of \$3,904.48.

### **LEGAL PRECEDENT**

Section 8137 of the Act provides:

“When the Secretary of Labor finds that the amount of compensation payable to an employee who is neither a citizen nor resident of the United States or Canada, or payable to a dependent of such an employee, is substantially disproportionate to compensation for disability or death payable in similar cases under local

statute, regulations, custom, or otherwise at the place outside the continental United States or Canada where the employee is working at the time of injury, he may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases....”<sup>1</sup>

Section 8107 of the Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, a claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</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 A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>3</sup>

When the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues.<sup>4</sup>

### ANALYSIS

The initial question presented is whether the Office properly determined the nature and extent of the compensation benefits to which appellant is entitled. In this regard the Office found that appellant was entitled to wage-loss compensation from April 14, 1998 to April 20, 2002, and also entitled to compensation under a schedule award based on a 48 percent impairment to the right arm.

The Office based its findings on the medical evidence from Dr. Conner, who performed surgery on April 13, 1998, and Dr. Bovard, who provided an opinion on permanent impairment. The Board finds that neither physician provided a fully reasoned medical opinion. Dr. Conner stated on November 5, 1998 that appellant continued with work restrictions since April 14, 1998. He did not describe the nature of the work restrictions or discuss the period prior to the surgery. Dr. Bovard based his opinion in part on loss of grip strength, without noting that the A.M.A., *Guides* state that loss of grip strength is considered only in rare cases when the impairing factor has not been considered adequately by other methods.<sup>5</sup>

Appellant was also referred to Dr. Becker for a second opinion on the issues of disability and permanent impairment. He did not provide a reasoned medical opinion on these issues. With respect to disability, the Office did not clearly state to Dr. Becker that he should provide an

---

<sup>1</sup> 5 U.S.C. § 8137(a).

<sup>2</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). 20 C.F.R. § 25.100(c) sets forth the compensation schedule for noncitizen federal employees who were injured outside of the United States.

<sup>3</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>4</sup> See *Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

<sup>5</sup> A.M.A., *Guides*, 508.

opinion as to the period that appellant was unable to work in his date-of-injury position due to the employment injury. He stated that appellant was permanently disabled from the time of the December 14, 1990 injury, but it is not clear for what specific periods he was disabled from performing his date-of-injury job. The referral physician noted some periods of total disability, without indicating whether the permanent disability he referred to resulted in disability for work during other periods.

With respect to permanent impairment, Dr. Becker did not provide a reasoned medical opinion. For example, under the A.M.A., *Guides* impairments due to loss of elbow supination and pronation are determined under Figure 16-37. The physician did not explain how he determined the degree of impairment. Since Dr. Becker did not provide a report that adequately addressed the relevant issues, the Office should further develop the record.

Accordingly, the case will be remanded to the Office for further development of the medical evidence. The Office should secure from appellant a statement as to the specific period of disability claimed. In addition, the statement of accepted facts should include a description of the date-of-injury job, appellant's work history since the injury and other information deemed relevant.<sup>6</sup> The Office should then obtain a reasoned medical opinion on the issues presented.

Once the medical evidence has been adequately developed, the Office should proceed to determine appellant's entitlement to compensation benefits under the Act. In this regard 20 C.F.R. Part 25 provides regulations relevant to the payment of compensation under the Act to employees of the United States who are neither citizens nor residents of the United States, any territory or Canada. Under the regulations, a special schedule of compensation is provided for such employees. The Office must first determine whether appellant's entitlement to any compensation is based on the special schedule or the applicable provisions for citizens or residents of the United States.

At the time of the injury on December 14, 1990, appellant was not a citizen or resident of the United States. However, there is evidence that appellant came to the United States in 1993 and, on appeal, his representative contends that appellant has been a permanent resident of the United States since 1995. The Office should develop the evidence and make a finding with respect to residency. With respect to a specific period of disability, the Office should consider the basis for payment of compensation and the amount of compensation to which appellant is entitled. For example, there may be periods of disability when appellant was not a resident or citizen of the United States, and other periods of disability when appellant was a resident of the United States. The Office should also explain the basis for determining pay rate.

If the Office determines that a period of disability or entitlement to compensation was based on the special schedule at 20 C.F.R. § 25.100, then the issue of whether 5 U.S.C. § 8137 is applicable should be addressed. Appellant must be entitled to compensation under local statute or regulation and compensation payable under the local statute or regulation must be

---

<sup>6</sup> The statement of accepted facts provided to Dr. Becker was not included in the record.

“substantially disproportionate” to the compensation payable under the Act.<sup>7</sup> The Office must make appropriate findings in this respect.

**CONCLUSION**

The case will be remanded to the Office for further development of the factual and medical evidence and appropriate findings on the relevant issues in this case. After such further development as the Office deems necessary, it should issue a merit decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated March 11, 2004 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: December 27, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

---

<sup>7</sup> The Office’s procedure manual is incorrect in stating the “compensation benefits are paid in accordance with the relevant provisions of the local law, or FECA, whichever is less.” Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Foreign National Claims*, Chapter 4.801.9(a) (September 1994). 5 U.S.C. § 8137 requires that the benefits under local law be “substantially disproportionate” to benefits under the Act before a claimant may be paid benefits in accord with local law.