United States Department of Labor
Employees' Compensation Appeals Board

ROGER E. BROWN, Appellant	)	
and	)	**Docket No. 05-1686**
	)	**Issued: April 10, 2006**
DEPARTMENT OF THE AIR FORCE, LAUGHLIN AIR FORCE BASE, TX, Employer	)	

Appearances:
Roger E. Brown, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 8, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 6, 2005, granting a schedule award for a five percent impairment of the left upper extremity, and a June 29, 2005 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits in this case.

ISSUES

The issues are: (1) whether appellant has more than a five percent impairment of the left upper extremity; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 16, 2003 appellant, then a 37-year-old mechanic, filed a claim for a traumatic injury stating that on that day he sustained an injury to his left hand while in the performance of

duty. Appellant stopped work that day and returned to limited duty on September 29, 2003 and to full duty on January 16, 2004.

On February 6, 2004 appellant was placed on total disability by his treating physician, Dr. Joe G. Gonzales, a physiatrist, who referred him to Dr. William Fontenot, an orthopedic surgeon. On March 26, 2004 Dr. Fontenot performed surgery for an open reduction with internal fixation of the left hamate bone. On August 13, 2004 Dr. Fontenot performed surgery for removal of hardware, a left carpal tunnel release, and release of the ulnar nerve at Guyon's canal. On February 4, 2005 the Office accepted a left hand open wound, ulnar nerve lesion, carpal tunnel syndrome, fracture of carpal bones and fracture of the hamate bone. It also authorized the noted surgeries of March 26 and August 13, 2004.

On April 19, 2005 appellant filed a claim for a schedule award. On April 27, 2005 Dr. Eradio Arredondo, a Board-certified orthopedic surgeon to whom appellant was referred by Dr. Fontenot, noted atrophy and loss of sensation of the little finger, and a positive 11-point discrimination test of both sides of the little finger. He determined that, on the basis of the ulnar nerve under the A.M.A., *Guides,* the radial sensory deficit was two percent impairment and the ulnar sensory deficit was three percent impairment for a total impairment of five percent for the left upper extremity. Dr. Arredondo stated that appellant had reached maximum medical improvement because he refused further surgery.

On May 10, 2005 the Office referred the medical evidence to an Office medical adviser for an impairment determination. The Office noted the accepted conditions as left hand, ulnar nerve, carpal bone and fractured hamate bone. On May 25, 2005 the Office medical adviser reviewed Dr. Arredondo's report and the statement of accepted facts. He determined that, based on the A.M.A., *Guides* page 448, Table 16-8, appellant had a two percent impairment of the radial side of the little finger and a three percent impairment of the ulnar side of the little finger due to sensory loss, Table 16-8, page 448,[1] for a five percent impairment of the left upper extremity, page 439, Table 16-2. The Office medical adviser stated that the date of maximum medical improvement was April 27, 2005, the date of Dr. Arredondo's impairment evaluation.

On June 6, 2005 the Office granted appellant a schedule award for five percent impairment of the left upper extremity. The award ran for 15.8 weeks, from April 27 to August 14, 2005.

On June 8, 2005 the Office received a June 3, 2005 report from Dr. Fontenot who stated that on that day he excised the left hand hamate hook and repaired the median and ulnar nerves at the left wrist. On June 13, 2005 appellant requested reconsideration noting that he had had surgery on June 3, 2005. Appellant also submitted records that had been reviewed previously.

The Office on June 14, 2005 approved carpal tunnel release and removal of a left wrist bone. In a report dated June 16, 2005, the employing establishment questioned why appellant had reached maximum medical improvement on April 27, 2005 if he had surgery on June 3, 2005.

[1] Figure 16-8 is on page 449.

On June 29, 2005 the Office denied review of appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] sets 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[4]

ANALYSIS -- ISSUE 1

In this case, the Office accepted left carpal tunnel release and left ulnar release which were performed on August 13, 2004. However, neither Dr. Arredondo nor the Office medical adviser considered these conditions in their evaluations of appellant's impairment. Dr. Arredondo rated appellant on atrophy and loss of sensation of the little finger at the ulnar nerve, while the Office medical adviser essentially repeated that evaluation finding a five percent impairment of the left upper extremity based on sensory loss of the little finger.

Office procedures[5] specifically provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15 which neither doctor used in his calculations. Further, the A.M.A., *Guides* provides that, regarding carpal tunnel syndrome, provide that evaluations be made only after an optimal recovery time following surgical decompression.[6] Section 16.8a provides that, since maximum strength is usually not regained for at least a year after an injury or surgical procedure and impairment is evaluated when an individual has reached maximum medical improvement, "strength can only be applied as a measure when a year or more has passed since the time of injury or surgery."[7] Neither Dr. Arredondo nor the Office medical adviser provided an evaluation more than a year from the August 13, 2004 decompression

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Willie C. Howard*, 55 ECAB ___ (Docket No. 04-342 & 04-464, issued May 27, 2004).

[5] *See* FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003). *See also Cristeen Falls*, 55 ECAB ___ (Docket No. 03-1665, issued March 29, 2004).

[6] A.M.A., *Guides* 495.

[7] *Id.* at 508.

surgeries or otherwise explained why they felt appellant had reached maximum improvement. Thus their evaluations are insufficient to establish appellant's impairment rating.

In view of the deficiencies in the evaluations of Dr. Arredondo and the Office medical adviser, the Office should obtain further medical pain ratable impairment of the left upper extremity and to provide a full description of appellant's loss.

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. Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[8]

The Board, therefore, finds that this case must be remanded for further development. On remand, the Office should refer appellant, the medical evidence of record, and a statement of accepted facts to a Board-certified orthopedic surgeon for examination and opinion as to whether appellant has any permanent impairment of the left upper extremity causally related to his employment injury. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

CONCLUSION

The Board finds that this case is not in posture for a decision on the issue of appellant's schedule award claim. Further development of the medical evidence is required.[9]

[8] *John W. Butler,* 39 ECAB 852 (1988).

[9] In light of the Board's resolution of the first issue, the second issue is moot

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 6, 2005 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.[10]

Issued: April 10, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[10] The Board notes that this case record contains evidence which was submitted subsequent to the Office's June 29, 2005 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).