

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

T.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 07-861
Issued: September 7, 2007**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
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 January 16, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 8, 2007 with respect to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a seven percent permanent impairment to his right arm, for which he received a schedule award on August 15, 2005.

FACTUAL HISTORY

The case was before the Board on two prior appeals. By decision dated January 9, 2006, the Board found that the referee examiner had not resolved a conflict in the medical evidence with respect to the degree of permanent impairment to the right arm.¹ The case was remanded

¹ Docket No. 05-1730 (issued January 9, 2006).

for a supplemental report from the referee physician. In a decision dated September 22, 2006, the Board again found that the conflict in the medical evidence remained unresolved.² Since a supplemental report from the referee examiner failed to resolve the conflict, the Office was directed to select a new referee examiner. The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

The Office referred appellant, a statement of accepted facts and medical records, to Dr. Bong Lee, a Board-certified orthopedic surgeon. By report dated November 16, 2006, Dr. Lee provided a history and results on examination. With respect to the right hand, he noted full range of motion with no atrophy or swelling. Dr. Lee stated palpation of the right hand elicited discomfort of the dorsum of the ulnar aspect of the hand along the fourth metacarpal area. He reported a normal sensory examination and provided grip strength results at three positions of the Jamar Dynamometer. Dr. Lee stated that the examination of the right hand and arm was normal, except for the handgrip test which showed that the right hand was weaker than the left. He concluded this was subjective, not objective. Dr. Lee stated that the examination "revealed completed recovery. [Appellant] has reached maximum medical improvement with no residuals, disability or permanent impairment of bodily function. My estimation of his impairment rate is zero, based on the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition]."

An Office medical adviser reviewed the evidence in a report dated December 27, 2006. He concurred with Dr. Lee's opinion, noting that the A.M.A., *Guides* do not assign a large role to strength measurements because they are functional tests influenced by subjective factors.

By decision dated January 8, 2007, the Office determined that appellant was not entitled to an additional schedule award. The Office found that Dr. Lee represented the weight of the medical evidence.

LEGAL PRECEDENT

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.³ 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.⁴

² Docket No. 06-897 (issued September 22, 2006).

³ 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).

⁴ A. George Lampo, 45 ECAB 441 (1994).

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵

ANALYSIS

In this case, the physician selected as a referee examiner, Dr. Lee, provided results on examination which he indicated showed an essentially normal examination for the right hand and arm. Dr. Lee noted, for example, full range of motion and a normal sensory examination. He noted that the strength testing on the Jamar Dynamometer revealed some weakness in the right hand which he found to be subjective. With respect to a permanent impairment based on strength evaluations, the A.M.A., *Guides*, as noted by the Office medical adviser, “does not assign a large role to such measurements.”⁶ The A.M.A., *Guides* explains that voluntary muscle strength testing remains somewhat subjective and it is difficult to control the influence by subjective factors.⁷

Therefore, Dr. Lee’s conclusion that the results of the Jamar Dynamometer were subjective and not sufficient to establish a ratable permanent impairment is consistent with the provisions of the A.M.A., *Guides*. Dr. Lee provided an unequivocal opinion, based on the history and results on examination, that appellant did not have an employment-related permanent impairment. As a referee examiner, his rationalized opinion is entitled to special weight. The Board, therefore, finds that based on the weight of the medical evidence, the Office properly determined that appellant was not entitled to an additional schedule award.

CONCLUSION

The referee examiner resolved the conflict in the medical evidence and established that appellant was not entitled to a schedule award for more than the seven percent previously awarded.

⁵ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁶ A.M.A., *Guides* 507.

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 8, 2007 is affirmed.

Issued: September 7, 2007
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