



Appellant underwent surgery by Dr. Scott Fried, an osteopath, for excision of Dupuytren's contracture of the left hand.

In a report dated April 12, 1999, Dr. Nicholas Diamond, an osteopath, opined that appellant had a 55 percent left arm impairment and a 32 percent right arm permanent impairment. By decision dated August 7, 2001, the Office granted schedule awards for a 10 percent right arm impairment and a 5 percent impairment for the left arm, based on an Office medical adviser's June 28, 2001 report.

Appellant was referred for a second opinion examination by Dr. Steven Weissfeld, an orthopedic surgeon. In a report dated June 13, 2002, Dr. Weissfeld opined that appellant had a 30 percent left arm impairment and a 20 percent right arm impairment under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The Office issued schedule awards dated December 5, 2002 for a 30 percent left arm impairment and a 20 percent right arm impairment, minus the previously awarded impairments in the August 7, 2001 decision.

By decision dated August 17, 2005, an Office hearing representative set aside the December 5, 2002 decision. The hearing representative stated that reports from Dr. Fried had diagnosed Dupuytren's contracture bilaterally and the Office should develop the issue of whether the case should be accepted for bilateral Dupuytren's contracture. After such a determination was made, the hearing representative indicated that the case should be referred to a referee physician to resolve a conflict in the medical evidence regarding the degree of permanent impairment.

The Office referred appellant to Dr. Harold Alexander, an orthopedic surgeon, for a second opinion examination. In a report dated December 19, 2005, Dr. Alexander stated, "I am not entirely clear that the Dupuytren's contracture of the right hand is related to employment he had with the [employing establishment]. That is according to the American Society for Surgery of the hand, there is insufficient evidence to confirm that manual labor contributes to the onset or progress of the disease. Control studies have not linked acute trauma to typical Dupuytren's disease." Dr. Alexander concluded "there is insufficient evidence to establish trauma as the cause of Dupuytren's contracture."

By decision dated January 17, 2006, the Office determined that right Dupuytren's contracture was not employment related. The Office found that the weight of the evidence was represented by Dr. Alexander.

Appellant was then referred to Dr. John Hemmer, Jr., a Board-certified orthopedic surgeon, as a referee examiner to resolve a conflict regarding the degree of permanent impairment. Dr. Hemmer was asked to provide an opinion as to permanent impairment, and the Office advised him that right Dupuytren's contracture was not an accepted condition.

In a report dated February 20, 2006, Dr. Hemmer provided a history and results on examination. He opined that "Dupuytren's is not caused by trauma, even if it is accepted as being traumatic.... As far as the Dupuytren's on his right hand he certainly has impairment from that Dupuytren's but again in my opinion that is not traumatic in nature."

By decision dated July 17, 2006, an Office hearing representative affirmed the January 17, 2006 decision. The hearing representative stated that there had been conflict between Dr. Fried and Dr. Alexander on the issue of right Dupuytren's contracture and causal relationship with employment. He did not specifically identify any reports from Dr. Fried. According to the hearing representative, "although Dr. Alexander fails to provide much in the way of medical rationale to support the opinion rendered" and Dr. Fried "supplies little in the way of medical rationale," there was a conflict that was resolved by Dr. Hemmer. The hearing representative found that Dr. Hemmer provided an unequivocal opinion "supported by some medical rationale."

The record also contains a June 22, 2006 decision finding that appellant was not entitled to an additional schedule award and December 8, 2006 decision from an Office hearing representative affirming the June 22, 2006 decision.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> When the Office undertakes development of the medical evidence, it has the responsibility to obtain medical evidence that resolves the issues presented in the case.<sup>5</sup>

### **ANALYSIS**

The hearing representative made a finding that a conflict in the medical evidence under 5 U.S.C. § 8123(a) existed between Dr. Fried and Dr. Alexander.<sup>6</sup> It is not clear what reports from Dr. Fried the hearing representative was relying on in finding a conflict. Moreover, the hearing representative found that neither Dr. Fried nor Dr. Alexander provided a rationalized medical opinion. Medical reports of diminished probative value are not sufficient to create a conflict under 5 U.S.C. § 8123(a).<sup>7</sup> Although the Office selected Dr. Hemmer as a referee physician, he is not considered a referee physician on the issue of whether a right hand Dupuytren's contracture was employment related.<sup>8</sup>

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<sup>2</sup> Appellant did not request review of the December 8, 2006 decision.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

<sup>6</sup> The Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination. 5 U.S.C. § 8123(a).

<sup>7</sup> *See, e.g., Adrienne L. Wintrip*, 38 ECAB 373 (1987).

<sup>8</sup> His report can still be considered for its own intrinsic value. *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

Dr. Hemmer was not specifically asked to provide an opinion on causal relationship between appellant's right Dupuytren's contracture and his federal employment. He stated that Dupuytren's contracture was "not caused by trauma" and was "not traumatic in nature." Dr. Alexander had also referred to "trauma" in his report. It is not clear how this general term was being used by Dr. Hemmer or by Dr. Alexander.<sup>9</sup> There was a reference in Dr. Alexander's report to general studies regarding Dupuytren's contracture and "manual labor" or "acute trauma," without a discussion of the specific facts in this case. The hearing representative acknowledged that Dr. Alexander's opinion was not well rationalized, but Dr. Hemmer also failed to provide adequate medical rationale. The issue is whether, based on the specific employment activities alleged by appellant and outlined in the statement of accepted facts, the diagnosed condition of right hand Dupuytren's contracture was causally related to the identified employment factors. There is no medical evidence that discusses the specific employment activities and provides a rationalized medical opinion on the issue of causal relationship.

Since the Office developed the issue, it should secure a rationalized medical opinion on the issue presented. The case will be remanded for further development of the medical evidence. After such further development as the Office deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Office did not obtain a rationalized medical opinion on the issue of whether a right hand Dupuytren's contracture was causally related to employment and the case is remanded for further development.

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<sup>9</sup> According to *Dorland's Illustrated Medical Dictionary* (30<sup>th</sup> ed. 2003), trauma is defined as "injury."

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 17, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 11, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board