

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

J.T., Appellant)
and) Docket No. 07-2030
TENNESSEE VALLEY AUTHORITY,) Issued: January 15, 2008
MAINTENANCE FACILITY, Spring City, TN,)
Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 29, 2007 merit decision concerning his entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a 42 percent permanent impairment of his left index finger, for which he received a schedule award.

FACTUAL HISTORY

The Office accepted that on August 22, 2004 appellant, then a 55-year-old machinist and welder, sustained a left index finger fracture when he caught his finger between two timbers. On August 22, 2004 Dr. Paul A. Abbey, an attending Board-certified hand surgeon, performed left

index finger surgery including an open reduction and internal fixation of a distal phalanx fracture and repair of the extensor tendon. The procedure was authorized by the Office. Appellant received appropriate compensation for periods of disability.

Appellant returned to full-time work for the employing establishment in late 2004 but continued to complain of hypersensitivity, edema and decreased range of motion in his left index finger. On November 15, 2004 he reported to Dr. Abbey that he had intermittent pain located mostly in his distal phalanx and that the pain increased with exposure and use. On May 24, 2005 Dr. Abbey indicated that appellant described pain in about the top two thirds of his left index finger on both sides.

On January 27, 2006 appellant filed a claim for a schedule award due to his August 22, 2004 employment injury. On February 13, 2006 the Office requested that Dr. Abbey provide an opinion on the permanent impairment of appellant's left index finger. On June 22, 2006 Dr. Abbey reported range of motion findings for appellant's left index finger noting that he had full motion at the metacarpal joint, 0 to 75 degrees of motion at the proximal interphalangeal joint and 10 to 25 degrees at the distal interphalangeal joint. He indicated that appellant had slight ulnar deviation at the proximal interphalangeal joint but was otherwise stable. Dr. Abbey noted that appellant had abnormal sensation from the mid proximal phalanx on the ulnar side which was complete and on the radial side at the proximal aspect of the proximal phalanx which was partial. He indicated that appellant had not reported problems with strength and did not have a lot of pain in the left index finger. Dr. Abbey concluded that, based on Figures 16-7, 16-21 and 16-23 and Table 16-7 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.), appellant had a 42 percent permanent impairment of his left index finger due to "abnormal sensation and abnormal motion." He noted that appellant had reached maximum medical improvement.

On June 22, 2006 Dr. James W. Dyer, an Office medical adviser and Board-certified orthopedic surgeon, reviewed the findings of Dr. Abbey and determined that according to Figures 16-21 and 16-23 and Table 16-7 of the A.M.A., *Guides* appellant had a 42 percent permanent impairment of his left index finger. He indicated that appellant had deficits based on limited motion and abnormal sensation. Dr. Dyer indicated that appellant had 2 percent impairment due to 10 degrees of distal interphalangeal joint extension, a 25 percent impairment due to 25 degrees of distal interphalangeal joint extension and a 15 percent impairment due to 75 degrees of proximal interphalangeal joint flexion.

In a June 29, 2007 award of compensation, the Office granted appellant a schedule award for a 42 percent permanent impairment of his left index finger. The award ran for 19.32 weeks from June 22 to November 4, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

It is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁴

ANALYSIS

The Office accepted that appellant sustained a left index finger fracture on August 22, 2004. On August 22, 2004 Dr. Abbey, an attending Board-certified hand surgeon, performed left index finger surgery including an open reduction and internal fixation of a distal phalanx fracture and repair of the extensor tendon. In a June 29, 2007 award of compensation, the Office granted appellant a schedule award for a 42 percent permanent impairment of his left index finger.

The Board finds that the case requires additional development to determine the extent of the permanent impairment of appellant's left index finger. On June 22, 2006 Dr. Dyer, an Office medical adviser and Board-certified orthopedic surgeon, reviewed the findings of Dr. Abbey and determined that according to the A.M.A., *Guides* appellant had a 42 percent permanent impairment of his left index finger.⁵

Dr. Dyer properly concluded that appellant had 2 percent impairment due to 10 degrees of distal interphalangeal joint extension and a 15 percent impairment due to 75 degrees of proximal interphalangeal joint flexion. He indicated that appellant had a 25 percent impairment due to 25 degrees of distal interphalangeal joint extension, but he actually had a 24 percent impairment due to this degree of extension.⁶ Dr. Abbey had indicated that appellant had "full motion" at the metacarpal joint but he provided no specific findings of metacarpal joint motion and therefore there is no way to determine whether appellant had impairment due to limited metacarpal joint motion under Figure 16-25 of the A.M.A., *Guides*.⁷

³ *Id.*

⁴ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

⁵ Dr. Dyer had also concluded that appellant had a 42 percent impairment of his left index finger.

⁶ See A.M.A., *Guides* 461, 463, Figures 16-21 and 16-23. The actual impairment for 25 degrees of distal interphalangeal joint extension would be 23.5 percent but this figure would be rounded up to 24 percent. See *id.* at Figure 16-21; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (June 2003).

⁷ See A.M.A., *Guides* 464, Figure 16-25.

With respect to abnormal sensation of the left index finger, Dr. Abbey stated that appellant had abnormal sensation from the mid proximal phalanx on the ulnar side which was complete and on the radial side at the proximal aspect of the proximal phalanx which was partial. However, neither Dr. Abbey nor Dr. Dyer provided a calculation of impairment due to sensory loss. The A.M.A., *Guides* provides detailed standards for evaluating such loss.⁸ The record does not contain a sufficient description of appellant's left index finger sensation to properly apply these standards.

As noted, the Office shares responsibility in the development of the evidence. The case will be remanded to the Office for further development of the medical evidence to determine the extent of the permanent impairment of appellant's left index finger. After such development it deems necessary, the Office should issue an appropriate

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he has more than a 42 percent permanent impairment of his left index finger, for which he received a schedule award. The case is remanded to the Office for further development.

⁸ See *id.* at 446-49. Particular attention should be paid to Figure 16-7 and Table 16-7 on pages 447 and 448 which evaluate transverse and longitudinal losses associated with the ulnar digital and radial digital nerves.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 29, 2007 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: January 15, 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