



## **FACTUAL HISTORY**

On February 17, 2000 appellant, then a 40-year-old distribution window clerk, filed a traumatic injury claim alleging that on February 16, 2000 she broke her left thumb which required sutures. As she was closing a safe she mistakenly smashed her left thumb inside the safe. Appellant stopped work on February 18, 2000 and she returned to full-time full-duty work on February 23, 2000. The Office accepted the claim for left thumb fracture.

On December 2, 2000 appellant filed a claim alleging that she sustained a recurrence of disability on April 5, 2000 causally related to the February 16, 2000 employment injury. She indicated that she originally injured her left leg and hip and left thumb on October 11, 1999 and reinjured them on February 16, 2000. Appellant underwent left hip surgery on April 24, 2000. By decision dated August 17, 2001, the Office denied her claim on the grounds that the medical evidence of record failed to establish that she sustained a recurrence of disability on April 5, 2000 due to the February 16, 2000 employment injuries. On September 10, 2001 appellant requested an oral hearing before an Office hearing representative. By decision dated May 8, 2002, an Office hearing representative set aside the August 17, 2001 decision and remanded the case to the Office for further development of the medical evidence to determine whether appellant's left hip injury and resultant surgery were due to the February 16, 2000 employment injuries. The hearing representative directed the Office to refer her to an appropriate specialist for a second opinion medical examination.

By letter dated June 17, 2002, the Office referred appellant, along with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, for a second opinion medical examination. In an August 27, 2002 medical report, Dr. Mandel stated that appellant's thumb had full range of motion, full strength and intact neurovascular status. Her hip had no swelling or tenderness and full range of motion. Appellant had equal leg lengths, intact motors and normal gait. Dr. Mandel stated that appellant was status post an incomplete intertrochanteric fracture of the left hip and open fracture of the distal phalanx of the left thumb due to the February 16, 2000 employment incident. He speculated that the hip injury could have been initiated by appellant's fall at the employing establishment on October 1, 1999 but stated that the February 16, 2000 employment incident caused the need for hip surgery. Dr. Mandel stated that both fractures had healed with no permanent residuals. Appellant required no further medical treatment and was able to continue working in a full-duty capacity.<sup>1</sup>

By letter dated September 3, 2002, the Office accepted appellant's claim for a left hip fracture and authorized the April 24, 2000 hip surgery based on Dr. Mandel's August 27, 2002 report.

On January 22, 2003 appellant filed a claim for a schedule award. She submitted an October 29, 2002 report of Dr. David Weiss, a Board-certified family practitioner. On physical examination, Dr. Weiss provided, among other things, range of motion measurements for appellant's left hip and thumb, circumferential measurements for her quadriceps and muscle and

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<sup>1</sup> Dr. Mandel indicated that, following her April 24, 2000 surgery and physical therapy, appellant returned to full-duty work on January 3, 2001.

grip strength of her left hip and hand. He diagnosed status post open fracture to the left thumb at the distal phalanx, status post disfiguring scar to the left thumb, post-traumatic osteoarthritis to the left thumb at the interphalangeal joint, status post femoral neck fracture to the left hip and status post open reduction internal fixation of proximal left femoral fracture. Dr. Weiss opined that the February 16, 2000 employment injuries caused appellant's subjective and objective findings. He determined that she sustained a 30 percent impairment of the left lower extremity and a 6 percent impairment of the left upper extremity based on the A.M.A., *Guides*.

On October 1, 2003 Dr. M.F. Quinlan, an Office medical adviser, reviewed appellant's medical records. He stated that Dr. Weiss' impairment ratings of the leg were based primarily on muscle weakness which was not apparent at the time of Dr. Mandel's second opinion medical examination. Similarly, Dr. Quinlan stated that the severe swelling found by Dr. Weiss was not present at the time of Dr. Mandel's examination. He recommended an impartial medical examination due to major discrepancies in the physical findings of Dr. Weiss and Dr. Mandel.

By letter dated June 24, 2004, the Office referred appellant, along with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. William H. Simon, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in the medical opinion evidence. In a July 12, 2004 report, Dr. Simon provided his findings on physical examination which included range of motion measurements for appellant's left hip and fingers. He found that appellant had sustained a healed fracture of the left thumb and degenerative disc disease of the lumbar spine with left-sided lumbar radiculopathy. Appellant was status post internal fixation of the left hip for an impacted base neck fracture. Dr. Simon opined that she did not sustain a hip fracture on February 16, 2000 based on his review of the case record. He stated that the hip surgery was for an old impacted base neck fracture that she sustained prior to the February 16, 2000 employment injuries. Dr. Simon opined that appellant sustained a left thumb fracture which was completely healed and did not result in any restriction in use. He noted that she was working full time. Dr. Simon concluded that appellant had no objective residuals of the accepted employment injuries.

By decision dated July 30, 2004, the Office denied appellant's claim for a schedule award. It accorded special weight to Dr. Simon's July 12, 2004 opinion as an impartial medical specialist in finding that she did not have any permanent impairment of the left thumb and hip due to the February 16, 2000 employment injuries. In a letter dated August 2, 2004, appellant, through her attorney, requested an oral hearing before an Office hearing representative.

By decision dated May 8, 2006, an Office hearing representative set aside the July 30, 2004 decision and remanded the case to the Office for further development of the medical evidence. She found that Dr. Simon's July 12, 2004 report was insufficient to resolve the conflict in the medical opinion evidence as he found that appellant's left hip fracture was not work related even though it had been accepted as such by the Office. The hearing representative further found that sufficient clarification could not be obtained from Dr. Simon. She directed the Office to refer appellant to a new impartial medical specialist to resolve the conflict.

On remand, the Office, by letter dated July 14, 2006, referred appellant, along with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Walter W. Dearolf, a Board-certified orthopedic surgeon, for a second impartial medical

examination. In a September 22, 2006 report, Dr. Dearolf reviewed a history of appellant's February 16, 2000 employment injuries, medical treatment and social background. On physical examination of the left upper extremity, he reported full range of motion of the left elbow, wrist, thumb and hand. Appellant's grip strength was nearly equal as to the opposite side. She had a well-healed surgical scar on the left thumb. Appellant's sensation was intact in the thumb and tendon function was normal. She had a negative Tinel's and Phalen's sign at the wrist. On examination of her back, Dr. Dearolf reported no tenderness. Appellant's left hip had full flexion, abduction, internal and external rotation equal to the opposite side. There was a negative sitting root and straight leg raising test. Both knees had full motion without effusion and the left knee had no tenderness. There was no quad weakness, hip flexors, atrophy about the thigh or calf and toe extensor weakness or sensory disturbance. Abduction and adduction strength were equal. Reflexes were symmetric and there was a well-healed six-inch scar over the anterolateral aspect of the hip. There was an area of mild tenderness over the trochanteric bursa and some mild tenderness in the buttock near the ischium.

Dr. Dearolf opined that appellant sustained a laceration of the left thumb and a fracture of the left hip as a result of the February 16, 2000 employment incident. He further opined that she had no residuals of these employment-related injuries and that restrictions were not warranted. Dr. Dearolf found no evidence of permanent impairment of the left thumb or hip. He concluded that appellant reached maximum medical improvement long before his examination and that she did not require further medical treatment.

By decision dated October 19, 2006, the Office found that appellant was not entitled to a schedule award for the left thumb and hip. It found that Dr. Dearolf's September 22, 2006 opinion was entitled to special weight accorded an impartial medical specialist. In an October 25, 2006 letter, appellant, through her attorney, requested an oral hearing before an Office hearing representative.

By decision dated May 29, 2007, an Office hearing representative affirmed the October 19, 2006 decision. He found that Dr. Dearolf's September 22, 2006 opinion that appellant did not have any permanent impairment of the left thumb and hip was entitled to special weight accorded an impartial medical specialist.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulations<sup>3</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>4</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> 5 U.S.C. § 8107(c)(19).

equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>5</sup>

Section 8123 of the Act provides that, if there is 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 an examination.<sup>6</sup> When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>7</sup>

### ANALYSIS

Appellant contends that she is entitled to a schedule award for permanent impairment to her left thumb and hip. The Office accepted that she sustained a fracture of the left thumb and hip. The Board notes that a conflict arose in the medical opinion evidence between Dr. Mandel, an Office referral physician, and Dr. Weiss, an attending physician and as to the extent of appellant's impairment. Dr. Mandel opined that appellant's employment-related fractures had healed and she had no permanent residuals. Dr. Weiss opined that appellant sustained a 30 percent impairment of the left lower extremity and a 6 percent impairment of the left upper extremity based on the A.M.A., *Guides*.

The Office initially referred appellant to Dr. Simon, selected as the impartial medical specialist. In a July 12, 2004 report, Dr. Simon opined that appellant did not sustain a left hip fracture due to the February 16, 2000 employment incident. He further opined that her left thumb fracture was completely healed and did not require any use restrictions. Dr. Simon concluded that appellant had no objective residuals of the February 16, 2000 employment injuries. In a May 8, 2006 decision, an Office hearing representative found that Dr. Simon's July 12, 2004 report was not entitled to special weight accorded an impartial medical specialist as he did not opine that appellant sustained an employment-related left hip fracture, which had been accepted by the Office.

On remand, the Office referred appellant to Dr. Dearolf for a second impartial medical examination. In a September 22, 2006 report, Dr. Dearolf reviewed a history of her February 16, 2000 employment injury, medical treatment and social background. He reported full range of motion of the left elbow, wrist, thumb and hand on physical examination. Dr. Dearolf stated that appellant's grip strength was nearly equal as to the opposite side. He noted a well-healed surgical scar on the left thumb. Dr. Dearolf stated that appellant's sensation was intact in the thumb and tendon function was normal. Appellant had a negative Tinel's and Phalen's sign at

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<sup>5</sup> *Supra* note 3.

<sup>6</sup> 5 U.S.C. § 8123.

<sup>7</sup> *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Bernadine P. Taylor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

the wrist. Dr. Dearolf reported no tenderness of the back. He also reported that the left hip had full flexion, abduction, internal and external rotation equal to the opposite side. There was a negative sitting root and straight leg raising test. Dr. Dearolf found that both knees had full motion without effusion and the left knee had no tenderness. He also found that there was no quad weakness, hip flexors, atrophy about the thigh or calf, toe extensor weakness or sensory disturbance. Abduction and adduction strength were equal. Dr. Dearolf reported symmetric reflexes and a well-healed six inch scar over the anterolateral aspect of the hip. There was an area of mild tenderness over the trochanteric bursa and some mild tenderness in the buttock near the ischium.

Dr. Dearolf opined that appellant sustained a laceration of the left thumb and a fracture of the left hip as a result of the February 16, 2000 employment incident. He further opined that she had no residuals of the employment-related injuries and that restrictions were not warranted. Dr. Dearolf found no evidence of permanent impairment of the left thumb or left hip and no objective evidence of employment-related impairment. He stated that appellant reached maximum medical improvement long before his examination. Dr. Dearolf concluded that she did not require further medical treatment.

The Board finds that Dr. Dearolf provided detailed findings on examination in his September 22, 2006 report. Although he stated that appellant sustained a laceration of the left thumb and not a fracture which was the condition accepted by the Office, he opined that the former condition was related to the February 16, 2000 employment incident and explained there were no objective residuals with regard to the thumb. Dr. Dearolf also found no objective residuals of appellant's employment-related left hip fracture. Therefore, there was no objective basis for an impairment rating for either the left thumb or hip under the A.M.A., *Guides*. For these reasons, Dr. Dearolf's report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's claim for a schedule award for her left thumb and hip.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 29, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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