

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

J.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 09-287
Issued: August 12, 2009**

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 November 10, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated September 15, 2008. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether appellant sustained any permanent impairment causally related to his accepted right hand fracture, thereby, entitling him to a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

Appellant, a 36-year-old outgoing clerk, injured his right hand on October 4, 1988 when he struck it on a rail. The Office accepted the claim for a right hand fracture. On May 18, 2007 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right upper extremity.

In a report dated June 24, 2008, Dr. William K. Feinstein, a specialist in orthopedic surgery, stated:

“[Appellant] does have a healed right fifth¹ metacarpal fracture, but his symptoms relate to the index finger. It is my medical opinion that his current symptoms are not related to the injury from October 4, 1988. There is no loss of function due to pain, limitation of motion, or muscle weakness or atrophy relative to the October 4, 1988 injury. There is no loss of function due to other additional fractures relative to [the] October 4, 1988 injury such as an amputation, causalgia, or RSD [reflex sympathetic dystrophy]. [Appellant] does have pain and discomfort, but it relates to the index finger which is away from the fracture on the other side of the hand. He does have limited range of motion of the index finger, but again the fracture is on the ulnar side of the hand -- [his] fifth metacarpal. The index finger articulates with the second metacarpal. [Appellant] may have some weakness in the hand, but again, I related it to the flexor tendinitis in the index finger rather than the healed fifth metacarpal fracture from 1988. Since it is now 20 years after the injury, it is difficult to determine the date of maximum medical improvement, but I would feel safe estimating the date of [maximum medical improvement] as one year after the injury, November 4, 1988. [Appellant] might benefit from treatment of his flexor tendinitis in the index finger and this may improve his symptoms, but I do not relate it to the injury of October 4, 1988. [Appellant] does not have any work restrictions relative to the October 4, 1988 hand injury. There is no permanent partial disability relative to the October 4, 1988 injury.”

In a report dated September 3, 2008, an Office medical adviser reviewed Dr. Feinstein’s opinion and agreed with his finding of a zero percent impairment of the right upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) [the A.M.A., *Guides*]. The Office medical adviser took into account Dr. Feinstein’s finding of a healed fractured fourth metacarpal with no gross deformity or carpal tunnel syndrome. He agreed that appellant should not be awarded any impairment for his accepted condition. The Office medical adviser noted that Dr. Feinstein found that appellant had some weakness in the hand, but noted that this stemmed from tendinitis in the index finger rather than the healed fifth metacarpal fracture stemming from the 1988 work injury.

By decision dated September 15, 2008, the Office denied appellant’s claim for a schedule award. It found that the medical evidence of record did not support that he sustained any employment-related permanent impairment.

¹ Dr. Feinstein incorrectly stated that appellant’s work-related right hand injury was to his fifth metacarpal; the actual injury was to the fourth metacarpal.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² 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 loss of use.³ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁴ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁵

ANALYSIS

The Office medical adviser found that appellant had no permanent impairment of the right upper extremity based on Dr. Feinstein's examination of the fourth metacarpal fracture. Dr. Feinstein advised that the fracture had fully healed with no residual weakness or deformity. While Dr. Feinstein did note some tendinitis in appellant's index finger, or second metacarpal, he indicated that this condition was not related to the accepted injury.⁶ The Office medical adviser properly determined that there were not sufficient physical findings stemming from appellant's accepted right hand fracture to warrant an impairment rating under the A.M.A., *Guides*.

The Board finds that the Office's September 15, 2008 decision finding that appellant has a zero percent impairment of his right upper extremity was properly based on the available evidence of record. Appellant has failed to provide probative medical evidence that he sustained permanent impairment from his accepted right hand fracture. For this reason, he is not entitled to a schedule award.

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment due to his right fourth finger fracture.

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

³ *Id.* at § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

⁵ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁶ The Board notes that none of the contemporaneous medical reports indicated that appellant had any other condition in his right hand at the time of his 1988 fourth metacarpal fracture.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 12, 2009
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