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

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| **V.W., Appellant** | ) | |
| **and** | ) | **Docket No. 09-927** |
| | ) | **Issued: February 22, 2010** |
| **DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL CENTER, Butner, NC, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On February 25, 2009 appellant filed a timely appeal of the December 22, 2008 merit decision of the Office of Workers' Compensation Programs denying his claim for a schedule award.[1] 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 sustained any permanent impairment of his left hand resulting from his March 2, 2008 employment injury.

[1] The Board notes that appellant also appealed from a February 2, 2009 decision. The Board notes, however, that the Office did not issue a final adverse decision on February 2, 2009. 20 C.F.R. § 501.3(a). The February 2, 2009 Office document is an informational letter and it does not purport to be a final adverse decision. In this letter, the Office advised appellant that on January 20, 2009 it received a duplicate of his October 28, 2008 claim (Form CA-7) for a schedule award. He was further advised that no further action would be taken as the Office had already denied his claim on December 22, 2008.

## ***FACTUAL HISTORY***

On March 2, 2008 appellant, then a 42-year-old correctional officer, sustained a laceration on his left pinky and ring fingers as a result of snatching a jammed door on an ice machine.

On October 28, 2008 appellant filed a CA-7 form for a schedule award. A medical record dated March 2, 2008 indicated that appellant was treated in the emergency room for a deep laceration on his left ring and little fingers. In a March 17, 2008 disability certificate, Dr. James A. Ketoff, an attending Board-certified surgeon, advised that appellant may return to work on April 1, 2008. On November 12, 2008 the Office accepted appellant's claim for an open wound with complications of the left ring and small fingers.

By letter dated November 19, 2008, the Office requested that Dr. Ketoff submit a detailed medical report providing the date appellant reached maximum medical improvement and to address any impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). The Office advised appellant to submit evidence within 30 days. There was no response.

In a decision dated December 22, 2008, the Office denied appellant's claim for a schedule award. It found that he failed to submit any medical evidence to establish that he sustained permanent impairment to a scheduled member of the body due to his accepted March 2, 2008 employment-related injury.[2]

## ***LEGAL PRECEDENT***

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] 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.[5] 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 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.[6]

[2] Following the issuance of the Office's December 22, 2008 decision, it received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a formal written request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. §10.606.

[3] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.404.

[5] 5 U.S.C. § 8107(c)(19).

[6] 20 C.F.R. § 10.404.

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. A schedule award is not payable until maximum improvement of the claimant's condition has been reached.[7] Maximum improvement means that the physical condition of the injured member's body has stabilized and will not improve further.[8] The question of when maximum medical improvement has been reached is a factual one which depends on the medical evidence of record. The determination of such date in each case is to be made based upon the medical evidence.[9]

## ***ANALYSIS***

The Office accepted that appellant sustained an open wound with complications of the left ring and small fingers while in the performance of duty on March 2, 2008. Appellant claimed a schedule award for permanent impairment to his left hand.

Appellant was requested to submit a medical opinion from a treating physician addressing the degree of permanent impairment under the A.M.A., *Guides* and the date of maximum medical improvement. However, he did not respond. There is no medical evidence to establish permanent impairment based on the accepted open wound with complications of the left ring and small fingers. The medical records from Halifax Regional Medical Center and the employing establishment health unit addressed the treatment of appellant's accepted employment-related condition. Dr. Ketoff's March 17, 2008 disability certificate advised that appellant could return to work on April 1, 2008. However, this evidence did not include an impairment rating based on the A.M.A., *Guides* or provide an adequate description of appellant's physical condition so that an impairment rating could be made. Moreover, the medical records do not address the issue of whether maximum medical improvement had been reached.[10] The Board notes that it is well established that a schedule award cannot be paid until a claimant has reached maximum medical improvement.[11]

To determine entitlement to a schedule award, appellant's physician must provide a sufficiently detailed description of his condition so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[12] As the medical evidence currently of record do not make a finding that

[7] *See Robert L. Mitchell, Jr.*, 34 ECAB 8 (1982).

[8] *Joseph R. Waples*, 44 ECAB 936 (1993).

[9] *Richard Larry Enders*, 48 ECAB 184 (1996); *Joseph R. Waples, id.*

[10] *Joseph R. Waples*, *supra* note 8.

[11] *See supra* notes 7-8; *see also L.H.*, 58 ECAB 561 (2007) (the question of when maximum medical improvement has been reached is a factual one that depends upon the medical findings in the record; the determination of such date is to be made in each case on the basis of the medical evidence).

[12] *Renee M. Straubinger*, 51 ECAB 667, 669 (2000) (where the Board found in providing an estimate of the percentage loss of use of a member of the body listed in the schedule provisions, a description of a claimant's impairment must be obtained from his or her physician which is in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment and its resulting restrictions and limitations).

maximum medical improvement had been reached or describe any permanent impairment, they are insufficient to establish appellant's claim for a schedule award. Appellant has failed to establish that he sustained a permanent impairment as a result of his accepted condition.[13] Consequently, the Office properly denied his claim for a schedule award.

## ***CONCLUSION***

The Board finds that appellant has not established permanent impairment to his left hand resulting from his March 2, 2008 employment injury.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[13] *Id.*; *see also Lela M. Shaw*, 51 ECAB 372 (2000).