United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 10-2204**
	)	**Issued: June 28, 2011**
DEPARTMENT OF THE NAVY, NAVAL CONSTRUCTION BATALLION CENTER, Gulfport, MS, Employer	)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

Appellant, a 56-year-old heavy mobile equipment repairer, injured his left small finger in the performance of duty on August 14, 2009. A piece of broken glass was embedded in his left pinky. While appellant was able to remove some of the glass, the rest had to be surgically removed on September 9, 2009. The Office of Workers' Compensation Programs accepted his traumatic injury claim for foreign body granuloma of skin and subcutaneous tissue, left.

On February 11, 2010 appellant filed a claim (Form CA-7) for a schedule award. He submitted a January 27, 2010 impairment rating from his treating physician, Dr. Henry T. Leis.[1] Dr. Leis diagnoses at the time included foreign body granuloma, neuroma digital and pain in hand. He noted that appellant had residual symptoms of pain, numbness and occasional tingling in the hand. Appellant also reported weakness and difficulty with grip while working as a mechanic. His self-rated pain was anywhere from 2 to 5 on a scale of 10. Dr. Leis provided left hand grip and pinch strength measurements, as well as range of motion measurements of the left small finger. Applying the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008), he found no ratable impairment.

[1] Dr. Leis is a Board-certified orthopedic surgeon. He performed appellant's September 9, 2009 surgery.

By decision dated February 22, 2010, the Office denied appellant's claim for a schedule award based on Dr. Leis' January 27, 2010 report. Appellant subsequently requested an oral hearing, which was held on June 11, 2010. He submitted a July 14, 2010 functional capacity evaluation (FCE), which included, *inter alia*, range of motion and muscle strength measurements with respect to appellant's left 5th finger.

In a decision dated August 5, 2010, the Branch of Hearings and Review affirmed the Office's February 22, 2010 decision. The hearing representative found that Dr. Leis' impairment rating did not support an award. He also noted that the July 14, 2010 FCE was prepared by a physical therapist, not a physician. Therefore, this evidence was insufficient to establish a claim for compensation.

The Board finds that the issue of whether appellant has a ratable impairment of the left upper extremity is not in posture for decision.

The procedure manual provides that, after obtaining all necessary medical evidence, the file should be routed to the district medical adviser for an opinion concerning the nature and percentage of impairment.[2] In this instance, neither the claims examiner nor the hearing representative forwarded the record to the district medical adviser for review. While the hearing representative is correct that a physical therapist is not competent to offer a medical opinion under the Federal Employees' Compensation Act,[3] the district medical adviser is a physician and is competent to review the available medical records and determine if the information is reliable and indicative of permanent impairment. The Office neglected to include the district medical adviser in this very important step in the schedule award adjudication process. Accordingly, the case shall be remanded for further medical development.

On remand, the Office shall forward the complete record to the district medical adviser for a determination of whether appellant has any left upper extremity impairment due to his August 14, 2009 employment injury.[4] After such further development as the Office deems appropriate, a *de novo* decision shall be issued regarding appellant's claim for a schedule award.

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6d (October 2004).

[3] A physical therapist is not considered a "physician" as defined under 5 U.S.C. § 8101(2). *E.g., David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

[4] While the Board's review is limited to the evidence of record at the time the Office issued its final decision, 20 C.F.R. § 501.2(c)(1), the Board notes that appellant has submitted additional evidence since the August 5, 2010 decision was issued.

IT IS HEREBY ORDERED THAT the August 5, 2010 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further action consistent with this order.

Issued: June 28, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board