

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN T. HANOUMIS and DEPARTMENT OF THE NAVY,  
COMMANDING OFFICER, Barstow, CA

*Docket No. 00-1205; Submitted on the Record;  
Issued March 13, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to more than a 100 percent loss of use of his left fourth finger for which he received a schedule award.

The Office of Workers' Compensation accepted appellant's claim for fracture of the left "pinky" finger, hardware removal on November 29, 1998 and amputation of the left fourth finger on April 22, 1999.

In a report dated February 11, 1999, a referral physician, Dr. Gordon S. Campbell, a Board-certified orthopedic surgeon, used the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1994) to determine that appellant had a 100 percent impairment to the left fourth finger which equated to a 10 percent left hand impairment and a 9 percent upper left extremity impairment.

On April 22, 1999 appellant, a left-handed welder, underwent surgery, consisting of amputation of the left fourth finger, by his treating physician, Dr. Luis Redix, an orthopedic surgeon.

By decision dated April 27, 1999, the Office denied appellant's claim, stating that the evidence of record showed that he had not yet reached maximum medical improvement.

In a form report dated June 2, 1999, Dr. Redix stated that appellant was ready for a final rating with a 32 percent residual deficit.

In a report dated June 3, 1999, a referral physician, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, opined that, using the A.M.A., *Guides*, opined that appellant had a 7 percent impairment to the right upper extremity. On June 11, 1999 appellant filed a claim for a schedule

award. By decision dated June 25, 1999, the Office issued an award for a seven percent loss of the right upper extremity.<sup>1</sup>

In a report dated October 14, 1999, Dr. Leonard A. Simpson, an orthopedic surgeon, noted that appellant's left fourth finger records did not indicate the level of amputation. He stated that, if the amputation was at the metacarpophalangeal (MP) joint, there would be a 100 percent impairment of the left fourth finger or a 10 percent impairment to the left hand, but if the amputation was more distal than the MP level, the award would be less than 100 percent. Dr. Simpson stated that, if there were any remaining finger, the range of motion at the remaining joint or joints should be stated in terms of flexion and extension.

In a report dated December 27, 1999, Dr. Campbell stated that appellant underwent amputation of the left fourth finger at the metacarpophalangeal (MP) joint in April 1999. He opined that appellant's left hand function had "vastly improved" but appellant continued to have weakness of grip and residual stiffness in the left ring finger, which had not changed. Dr. Campbell stated that, using a Jamar Dynamometer, appellant's grip strength was "46/46/56" in the left, dominant and injured hand and "102/104/98" in the right uninjured hand. He added that, because appellant's level of amputation of the left fourth finger was at the MP joint, appellant had no motion in the MP, proximal interphalangeal or distal interphalangeal joints.

In a report dated January 3, 2000, Dr. Redix stated that appellant remained permanently partially disabled with a 37 percent loss of function and complete loss of the digit at the MP joint. He stated that appellant had complete amputation of the left fourth finger at the level of the MP joint; he had no focal tenderness but had a 10 degree MP extension in the left ring finger and a grip strength of "50/80 x 3."

In a report dated February 10, 2000, Dr. Simpson related that the April 22, 1999 operative report indicated that appellant underwent amputation of the fourth finger using an ulnar-based rotational flap and that the amputation was performed at the metatarsophalangeal joint. He reviewed Dr. Campbell's December 27, 1999 report in which Dr. Campbell stated that appellant had complaints of grip weakness with residual stiffness of the left finger which had not changed and that the thumb, index and middle fingers of the left hand were normal. Dr. Simpson noted that amputation level was at the MP joint and that grip strength was diminished on the left compared to the right. He concluded that appellant had a 100 percent impairment to the left fourth finger.

By decision dated February 22, 2000, the Office issued appellant an award for a 100 percent loss of use of the left fourth finger.

The Board finds that the case is not in posture for decision.

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<sup>1</sup> This impairment resulted from a work-related accident on August 17, 1993 when hydrochloric acid spilled on appellant's right hand as he was trying to cut through a cable.

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.<sup>3</sup> 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.<sup>4</sup>

Section 8107(c)(12) of the Act provides that, for total or 100 percent loss of the fourth finger, an employee is entitled to 15 weeks of compensation<sup>5</sup> and section 8107(c)(3) provides that for total or 100 percent loss of the hand an employee is entitled to 244 weeks of compensation.<sup>6</sup> Section 8107(c)(19) provides that compensation for permanent partial loss of use of a member may for proportionate loss of use of the member.<sup>7</sup> When the residuals of an injury to a member of the body specified in the schedule award provisions of the Act extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.<sup>8</sup>

In this case, the referral physician, Dr. Campbell, found that, using a dynamometer, appellant's grip strength was "46/46/56" in the left hand, compared with "101/104/98 in the right hand." In his January 3, 2000 report, Dr. Redix opined that appellant had a 37 percent loss of function, a 10 degree extension in the left fourth finger and a grip strength of "50/80 x 3." In his February 10, 2000 report, in addition to finding that appellant had a 100 percent impairment to the left fourth finger, Dr. Simpson noted complaints of grip weakness with residual stiffness of the left finger and grip strength on the left compared to the right. Although these doctors indicated that, in addition to appellant's 100 percent loss of use of his left fourth finger, appellant had diminished grip strength and Dr. Redix and Campbell had actual measurements of appellant's diminished grip strength, none of them used the A.M.A., *Guides* (4<sup>th</sup> ed. 1994) to determine the percentage of impairment based on loss of grip strength.

The case must, therefore, be remanded so that the Office may further develop the medical evidence regarding whether the permanent residuals of the left fourth finger are confined to the

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<sup>2</sup> 5 U.S.C. § 8107 *et seq.*

<sup>3</sup> *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

<sup>4</sup> *Arthur E. Anderson*, *supra* note 3 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

<sup>5</sup> 5 U.S.C. § 8107(c)(12).

<sup>6</sup> 5 U.S.C. § 8107(c)(3).

<sup>7</sup> 5 U.S.C. § 8107(c)(19); *see Tonya D. Bell*, 43 ECAB 845, 847 (1992).

<sup>8</sup> *Tonya D. Bell*, *supra* note 7 at 849; *Peter D. Eaton*, 36 ECAB 179, 181 (1984).

left fourth finger or whether they extend into the left hand. On remand, the Office should obtain a medical report discussing whether the left index finger impairment extends into the left hand. After such further development as the Office deems necessary, the Office shall issue a *de novo* decision.

The February 22, 2000 decision of the Office of Workers' Compensation Programs is hereby vacated, and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC  
March 13, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member