United States Department of Labor
Employees' Compensation Appeals Board

PHILLIP C. GARR, Appellant	)	
and	)	**Docket No. 04-1568**
	)	**Issued: November 29, 2004**
DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, Ogden, UT, Employer	)	

Appearances:
Phillip C. Garr, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 1, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' hearing representative dated March 15, 2004 and finalized April 21, 2004 which found that he was not entitled to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award issue.

ISSUE

The issue is whether appellant has met his burden of proof to establish entitlement to a schedule award. Appellant contends that the Office should send him for a second opinion evaluation as his physician did not provide the Office with complete and accurate information.

FACTUAL HISTORY

On June 17, 1997 appellant, then a 46-year-old aircraft mechanic, filed an occupational claim for symptoms occurring in his right hand which he attributed to use of the hand and power tools in his job. He advised that he first became aware of his condition and that it was caused or

aggravated by his employment on October 10, 1992. Appellant did not stop work. On March 3, 1997 the Office accepted the claim for right carpal tunnel syndrome. Appellant underwent a right side carpal tunnel release on April 15, 1997 and a right median nerve decompression on October 19, 2001.

On September 30, 2002 appellant claimed a schedule award. In support of his claim, he submitted a September 16, 2002 report from Dr. James W. Adams, a Board-certified orthopedic surgeon, who stated that appellant did not regain normal sensation following his October 19, 2001 surgery and that he was considered permanently stationary. He advised that appellant underwent a detailed evaluation at the Wasatch Therapy Clinic on September 10, 2002. Applying the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to appellant's loss of sensation in the thumb and the widened two-point and abnormal thenar function due to atrophy, Dr. Adams determined:

> "[I]f a 21 percent impairment at the thumb existed this then translated to an 8 percent impairment to the hand and also due to some loss of sensation, rather 7 percent impairment to the hand and due to some limited or decreased range of motion of the wrist another 2 percent was added giving the patient a[n] 8 percent impairment to the upper extremity, which translated to a 5 percent impairment to the whole person."

In a November 26, 2002 letter, the Office advised appellant to have Dr. Adams complete a CA-1303 form, which provided the A.M.A., *Guides* protocol for establishing impairment for the wrist, hands and the fingers, with regard to his claim for a schedule award.

On January 20, 2003 the Office medical adviser advised that further delineation was needed under the A.M.A., *Guides* protocol and listed the information which was required. In a January 24, 2003 letter, the Office advised appellant of the Office medical adviser's comments and asked that he have Dr. Adams provide the needed documentation.

On February 4, 2003 Dr. Adams submitted the CA-1303 form. With respect to the right wrist, Dr. Adams indicated that maximum improvement was reached on September 16, 2002 and that the impairment rating was based on loss of function due to sensory loss and muscle atrophy or weakness. He noted that appellant had a sensory loss, but did not answer the form questions pertaining to the intensity of the wrist pain and sensory loss or alteration of sensation. Range of motion findings for the right wrist were: 50 degrees dorsiflexion, 59 degrees palmar flexion, 20 degrees radial deviation, 29 degrees ulnar deviation with no ankylosis. No findings were provided for the nonaffected left side. Dr. Adams advised that appellant could lift 39.9 pounds on the right side and 17.7 pounds on the left side. Pinch strength changes were also noted. For the hand and fingers, Dr. Adams stated that the impairment was calculated based on loss of sensory alteration and loss of function due to muscle atrophy. The intensity of appellant's pain was not noted. Range of motion measurements for the right thumb were: 48 degrees interphalangeal (IP) joint, 45 degrees metacarpal phalangeal (MP) joint, 47 degrees radial abduction, and 3 centimeters adduction. No range of motion findings for the other fingers were reported. Regarding the question of weakness/atrophy, Dr. Adams reported diminished light touch of 3.61.

In a February 15, 2003 letter, the Office medical adviser requested that Dr. Adams complete the worksheets found in the A.M.A., *Guides* in Figure 16-1b for the wrist, elbow and shoulder and, if necessary, Figure 16-1a for the hand. He further stated that he was unable to decipher how Dr. Adams had arrived at his numbers and specific delineation was needed to obtain an impairment rating. In a May 17, 2003 letter, the Office advised appellant of the Office medical adviser's request and asked that he have Dr. Adams provide the needed documentation.

In an April 9, 2003 worksheet of Figure 16-1b of the A.M.A., *Guides* for the wrist, elbow and shoulder, Dr. Adams indicated that appellant had no abnormal motion of his wrist and no sensory deficit. He further indicated that there were no impairments for: regional impairment of the upper extremity, peripheral nerve system, peripheral vascular system or other disorders. Accordingly, he opined that appellant had a zero percent upper extremity impairment.

In a June 9, 2003 report, the Office medical adviser indicated that appellant had a zero percent impairment for the condition of right wrist status post release.

By decision dated June 18, 2003, the Office found that appellant was not entitled to a schedule award.

On July 14, 2003 appellant requested a review of the written record. In a letter also dated July 14, 2003, appellant advised that he has continual pain and numbness in both his hands and pain and stiffness in his right elbow and questioned the accuracy of Dr. Adams' reports. He also attached a June 13, 2002 memorandum from the employing establishment which advised that the base medical officer had determined that he could not physically perform the duties of his current position.

By decision dated March 15, 2004 and finalized April 21, 2004, an Office hearing representative affirmed the June 18, 2003 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[1] The schedule award provision of the Act[2] and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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

[1] 5 U.S.C. § 8107(a).

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides*[4] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

ANALYSIS

The Office relied on the June 9, 2003 report of its Office medical adviser in finding that appellant had no impairment resulting from his accepted right wrist condition. It is well settled that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides,* the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides.*[6]

The Board finds that the matter is not in posture for a decision. Dr. Adams submitted a February 4, 2003 report containing range of motion findings for the right wrist and opined in the April 9, 2003 worksheet of Figure 16-1b of the A.M.A., *Guides* that appellant had no abnormal motion and no sensory deficit of his right wrist and indicated that there were no other impairments. The Office medical adviser evaluated this information and concluded that the medical evidence indicated that appellant had a zero percent impairment for the condition of right wrist status post release. Thus, this medical evidence supported that appellant does not have a right upper extremity impairment due his right wrist injury.

The Board finds, however, that other evidence from Dr. Adams indicates that appellant may have ratable impairment findings pertaining to his right thumb. A review of Dr. Adams' CA-1303 form measurements for appellant's right thumb indicates that ratable impairment values can be obtained under the A.M.A., *Guides* for abnormal motion at the IP and MP joints[7] and lack of radial abduction and adduction.[8] Although the Office sought to develop this, Dr. Adams did not provide the A.M.A., *Guides* worksheet for Figure 16-1a of the hand. Moreover, the Office medical adviser did not explain why such a finding would not merit an impairment rating under the A.M.A., *Guides,* or whether the thumb impairment resulted from the accepted condition. Thus, the issue of whether appellant has any impairment to his right upper extremity arising from his thumb requires further development.

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done. Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[9]

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[4] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.,* 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

[5] *Supra* note 3.

[6] *Paul R. Evans, Jr.,* 44 ECAB 646 (1993).

[7] A.M.A., *Guides* 456, 457, Figure 16-12, 16-15.

[8] *Id.* at 459, Table 16-8a, 16-8b.

[9] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John W. Butler*, 39 ECAB 852 (1988).

The Board, therefore, finds that this case must be remanded for further medical development. Upon, return of the case record, the Office shall conduct such further medical development as is necessary to determine if appellant has any compensable impairment resulting from his accepted employment injury. Following this, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

CONCLUSION

The Board finds that this case is not in posture for decision and must be remanded for further medical development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2004 and finalized April 21, 2004 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 29, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member