

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

B.H., Appellant

and

**DEPARTMENT OF LABOR, TURNER JOB
CORPS CENTER, Albany, GA, Employer**

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**Docket No. 08-163
Issued: April 16, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 12, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' July 31, 2007 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant has more than a five percent impairment to his right upper extremity, for which he received a schedule award.

¹ On March 20, 2007 the Office issued a decision denying appellant's request for wage-loss compensation, beginning June 5, 2006 and his request to expand his claim to include additional conditions. The Office also terminated appellant's compensation and medical benefits on the grounds that his accepted condition had resolved. Appellant requested an oral hearing, which was scheduled to be held on August 9, 2007. As this matter is in an interlocutory posture, the Board does not have jurisdiction over these issues. *See* 20 C.F.R. § 501.2(c) (the Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case).

FACTUAL HISTORY

Appellant, a 24-year-old apprentice, filed a traumatic injury claim on May 2, 2006 alleging that he sustained a right hand injury on that date while adjusting bars on a weight machine. The Office accepted the claim for a closed fracture of the distal phalanx, right, fourth finger. On June 2, 2006 appellant returned to work with no restrictions.

Appellant submitted a report dated January 4, 2007 from Dr. Robert S. Pilcher, a Board-certified orthopedic surgeon. His physical examination reflected that appellant's hand was neurovascularly intact, and that his minor injury to the ring finger had totally healed. Dr. Pilcher provided a permanent partial disability rating of seven percent of the whole person, which he opined was "generous." On February 8, 2007 Dr. Pilcher stated that appellant had sustained a minor injury to his right ring finger, but was "totally healed." He opined that appellant had reached maximum medical improvement.

On May 15, 2007 appellant filed a claim for a schedule award, based on a partial loss of use of his right upper extremity. On June 18, 2007 the Office asked Dr. Pilcher to provide additional information as to the degree of appellant's permanent impairment as a result of his accepted condition, pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

On June 26, 2007 Dr. Pilcher opined that appellant had a five percent impairment of his right upper extremity as a result of his accepted condition. He stated that appellant had retained 10 degrees of flexion for the proximal interphalangeal (PIP) joint of the right ring finger and 15 degrees of flexion for the distal interphalangeal (DIP) joint of the right ring finger. Referring to Figures 16-21 and 16-23 at pages 461 and 463 of the fifth edition of the A.M.A., *Guides*, Dr. Pilcher determined that, based upon his measurements, appellant would have a 30 percent impairment rating for the DIP joint and a 30 percent rating for the PIP joint, for a combined total impairment of 60 percent for the right ring finger. Pursuant to Table 16-1 at page 438, he noted that the 60 percent impairment of the right ring finger equated to a 6 percent impairment of the hand. In turn, according to Table 16-2 at page 439, a six percent hand impairment equates to a five percent right upper extremity impairment.

The Office referred Dr. Pilcher's report to an Office medical adviser for review and an opinion as to the degree of appellant's permanent impairment. On July 10, 2007 the Office medical adviser applied the A.M.A., *Guides* to Dr. Pilcher's findings. Referring to Figure 16-21 at page 461, the Office medical adviser concluded that appellant had a 30 percent impairment, based upon a finding of 15 degrees of flexion for the DIP joint of the right ring finger. Referring to Figure 16-23 at page 463, he concluded that appellant had a 30 percent impairment, based upon a finding of 10 degrees of flexion for the PIP joint of the right ring finger. Combining the finger impairments for both joints pursuant to the Combined Values Chart at page 604, the Office medical adviser determined that appellant had a 51 percent impairment of the right ring finger, which equated to a 5 percent impairment of the right hand, according to Table 16-1 at page 438, and a 5 percent right upper extremity impairment pursuant to Table 16-2 at page 439.

On July 31, 2007 the Office granted appellant a schedule award for a five percent impairment rating to the right upper extremity. The period of the award was from February 8

through May 28, 2007, for a total of 15.6 weeks of compensation. The Office found that the date of maximum medical improvement was February 8, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² sets 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* as the standard to be used for evaluating schedule losses.⁴

ANALYSIS

The Board finds that the medical evidence of record does not establish that appellant has more than a five percent impairment of the right upper extremity. Applying Dr. Pilcher's findings and calculations to the tables and figures of the A.M.A., *Guides*, the Office medical adviser properly computed a five percent impairment of the right upper extremity based on loss of range of motion of appellant's ring finger. In accordance with Dr. Pilcher's report, he determined that the date of maximum medical improvement was February 8, 2007.

The method for computing impairments based on loss of motion of the hands, wrists and fingers is outlined at section 16.4(c) of the A.M.A., *Guides*, at page 452. The Office medical adviser properly relied on Figure 16-21 at page 461 to determine that appellant had a 30 percent impairment of the right ring finger, based upon a finding of 15 degrees of flexion for the DIP joint. He also correctly relied on Figure 16-23 at page 463 to calculate a 30 percent impairment, based upon a finding of 10 degrees of flexion for the PIP joint. Thereafter, in accordance with page 465 of the A.M.A., *Guides*, he combined finger impairments derived for each joint under the Combined Values Chart on page 604, in order to obtain total finger impairment of 51 percent due to loss of motion.⁵ The impairment value for the ring finger was then converted to an impairment of the hand pursuant to Table 16-1 at page 438. Under this table, appellant has a hand impairment of five percent. The hand impairment value was then converted to an impairment of the upper extremity pursuant to Table 16-2 at page 439, resulting in an upper extremity impairment of five percent.

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

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides* 465. (In order to obtain total finger impairment due to loss of motion, finger impairments derived for each joint are to be combined under the Combined Values Chart.) The Board notes that Dr. Pilcher added the impairments for each joint, rather than combining them under the Combined Values Chart, as required. However, the corresponding impairment rating for the hand is five percent in either case.

The Board finds that the medical adviser properly applied the appropriate tables and figures contained in the A.M.A., *Guides* in determining that appellant had a five percent permanent impairment of the right upper extremity. There is no medical evidence of record supporting appellant's contention that he has more than a five percent impairment of his right upper extremity.

CONCLUSION

The Board finds that appellant has no more than a five percent impairment of the right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board