

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE A. RIOS and DEPARTMENT OF AGRICULTURE, FOREST
SERVICE, ARROYO SECO RANGER DISTRICT, Flintridge, CA

*Docket No. 98-472; Submitted on the Record;
Issued August 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to more than a 53 percent permanent impairment of the left middle finger, for which she has already received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant is not entitled to more than a 53 percent permanent impairment of the left middle finger for which she has already received a schedule award.

On March 29, 1996 appellant, then a volunteer, filed a traumatic injury claim (Form CA-1) alleging that on March 28, 1996 she severed a knuckle of her left middle finger and sustained a fracture and lacerations of the left index finger while trying to figure out how to lock a gate when someone pushed open the gate. Appellant stopped work on March 29, 1996. Appellant returned to her usual work on May 15, 1996.

By letter dated May 8, 1996, the Office of Workers' Compensation Programs accepted appellant's claim for a traumatic amputation of the tip on her left middle finger.

By letter dated September 12, 1996, the Office referred appellant along with a list of specific questions to Dr. John Gross, a Board-certified surgeon, for a second opinion examination to determine the extent of permanent impairment of appellant's left middle finger due to the March 28, 1996 employment injury based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. By letter of the same date, the Office advised Dr. Gross of the referral. On October 21, 1996 the Office received Dr. Gross' findings.

On October 21, 1996 appellant filed a claim for a schedule award (Form CA-7) accompanied by medical evidence.

On December 9, 1996 an Office medical adviser reviewed the medical evidence of record and determined that appellant had a 53 percent permanent impairment of the left middle finger based on the fourth edition of the A.M.A., *Guides*.

By decision dated December 11, 1996, the Office granted appellant a schedule award for a 53 percent permanent impairment of the left middle finger for the period October 1, 1996 through January 20, 1997.

In a June 1, 1997 letter, appellant requested reconsideration of the Office's decision. By decision dated June 25, 1997, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was of an immaterial nature and thus, insufficient to warrant a review of the prior decision.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation,² 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.³ 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 under the law for 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. The A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

Dr. Gross' findings provided that appellant experienced occasional discomfort of the left long finger, that appellant had an amputation and that she was gradually improving. He noted that this did not interfere with appellant's daily activity. Regarding the range of motion of appellant's long finger, Dr. Gross indicated that appellant's finger was amputated at the distal interphalangeal (DIP) joint. He further indicated that appellant's proximal interphalangeal (PIP) joint was 90 degrees. Dr. Gross concluded that appellant reached maximum medical improvement on October 1, 1996.

Utilizing Figure 17, page 30 of the fourth edition of the A.M.A., *Guides*, the Office medical adviser determined that appellant had a 50 percent impairment due to the amputation of her left middle finger. The Office medical adviser further determined that appellant had a 6 percent impairment for the loss of flexion of her left middle finger at the PIP joint based on Figure 21, page 33 of the A.M.A., *Guides*. Using the Combined Values Chart on page 322 of the A.M.A., *Guides*, the Office medical adviser determined that appellant had a 53 percent impairment of the left middle finger. The Board finds that the Office medical adviser properly

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

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

applied the figures and chart in the fourth edition of the A.M.A., *Guides* to determine that appellant had a 53 percent permanent impairment of the left middle finger. Therefore, appellant is not entitled to an increase in her schedule award.

On appeal appellant contended that her March 28, 1996 employment injury will affect her ability to obtain a clerical position, for which she is qualified to perform typing duties, in the future. The record reveals that as a volunteer for the employing establishment, appellant picked up trash along roads and highways. The record also reveals that appellant worked as a clerical employee performing word processing and accounting duties outside the federal government. The record further reveals that appellant was not employed in this position on the date of her injury.

An award of compensation for permanent partial impairment under the schedule is in lieu of compensation, therefore, under other provisions of the Act and is made without regard to whether or not there is a loss of wage-earning capacity resulting from the injury and regardless of its effects upon employment opportunities. No additional compensation may be paid unless there is a change in the degree of impairment.⁵ The weight of the reliable and substantial evidence of record in this case does not warrant a finding that appellant has more than a 53 percent permanent impairment of the left middle finger.

The June 25, 1997 and December 11, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
August 20, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁵ *Harry D. Butler*, 43 ECAB 859, 865 (1992); *Elvyn Villanueva*, 13 ECAB 236 (1961); *Bernard O. Bonham*, 11 ECAB 378 (1960).