

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVIN BOSSERMAN and DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, Brooklyn, NY

*Docket No. 99-1832; Submitted on the Record;
Issued August 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a 50 percent permanent impairment to his right ring finger for which he received a schedule award.

On April 6, 1993 appellant, then a 61-year-old laborer, filed a claim alleging that on the same day his right ring finger jammed in between the rim and axle of a tire while he was putting the tire on the rack truck. Appellant underwent an amputation of his right distal tuft the same day. The Office of Workers' Compensation Programs accepted appellant's claim for a crush injury of right index finger.

In a December 26, 1996 report, Dr. Ronald J. Potash, a general practitioner, noted that the history of injury included a tuft open comminuted fracture with soft tissue loss of the ring finger, for which appellant had same day surgery and an ulnar aspect laceration of the middle finger, which crossed over the dorsal aspect of the distal interphalangeal joint, which was treated with dressing and without sutures. Dr. Potash provided the results of his examination and diagnosed status post partial amputation of distal phalanx, digit 4, right hand with neurosensory loss of 30 millimeter (mm) ulnar digital, (2 point discrimination) and loss of 29 mm radial digital (2 point discrimination) with range of motion of the distal interphalangeal joint loss due to chronic synovitis. Also diagnosed was status post contused laceration of the dorsal distal interphalangeal joint third digit right hand with loss of range of motion of the distal interphalangeal joint due to chronic diffuse joint synovitis. Dr. Potash utilized the American Medical Association (A.M.A.,)

Guides to the Evaluation of Permanent Impairment, (4th ed. 1993) and concluded, with appropriate references, as follows:

“(1) For the right little finger amputation = 45 percent digit, = 5 percent hand,¹ for the right little finger sensory loss (total transverse) = 5 percent hand,² for the right little finger range of motion deficit metacarpophalangeal extension = 3 percent digit³ distal interphalangeal joint flexion = 18 percent digit⁴ combined range of motion deficit 20 percent digit = 2 percent hand. Total combined right 4th digit impairment = 13 percent hand (3+5+5).

“(2) Right index finger range of motion deficit metacarpophalangeal flexion = 9 percent⁵ proximal interphalangeal joint = 3 percent⁶ distal interphalangeal joint = 24 percent.⁷ Combined range of motion deficit 33 percent digit, = 7 percent, hand.

“(3) Right middle finger range of motion deficit metacarpophalangeal flexion = 9 percent⁸ distal interphalangeal joint = 26 percent.⁹ Combined range of motion deficit 33 percent digit, = 7 percent, hand.

“(4) Right ring finger range of motion deficit metacarpophalangeal flexion = 6 percent,¹⁰ distal interphalangeal joint = 26 percent.¹¹ Combined range of motion deficit 30 percent digit = 3 percent, hand.

Dr. Potash concluded that appellant reached maximum medical improvement on December 9, 1996.

The Office referred the case file to an Office medical adviser for an opinion regarding appellant's entitlement to a schedule award. In a report dated May 20, 1998, the Office medical adviser reviewed Dr. Potash's medical report and the reports of Dr. Christopher D. Johnson,

¹ Figure 3, page 18 of the A.M.A., *Guides*.

² Figure 5, page 22 of the A.M.A., *Guides*.

³ Figure 23, page 34 of the A.M.A., *Guides*.

⁴ Figure 19, page 32 of the A.M.A., *Guides*.

⁵ Figure 23, page 34 of the A.M.A., *Guides*.

⁶ Figure 21, page 33 of the A.M.A., *Guides*.

⁷ Figure 19, page 32 of the A.M.A., *Guides*.

⁸ Figure 23, page 34 of the A.M.A., *Guides*.

⁹ Figure 19, page 32 of the A.M.A., *Guides*.

¹⁰ Figure 23, page 34 of the A.M.A., *Guides*.

¹¹ Figure 19, page 32 of the A.M.A., *Guides*.

appellant's treating Board-certified orthopedic hand surgeon. The Office medical adviser referred to Figure 17, page 30 of the A.M.A., *Guides* to determine that appellant had a 50 percent permanent impairment to his right ring finger due to amputation of the distal tuft.

On June 2, 1998 the Office granted appellant a schedule award for a 50 percent permanent impairment to his right ring finger. The award was for 12.5 weeks to run for the period December 9, 1996 to March 6, 1997.

On June 12, 1998 appellant, through his attorney, requested an oral hearing before an Office hearing representative. By decision dated February 8, 1999, an Office hearing representative affirmed the June 2, 1998 decision. The Office hearing representative rejected appellant's argument that he was entitled to an impairment rating of the hand instead of an impairment rating to the right ring finger as there was no corroborating medical evidence to establish additional injury to the right middle finger.

The Board finds that appellant has no more than a 50 percent permanent impairment of the right ring finger for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act¹² and section 10.304 of the implementing federal regulations,¹³ schedule awards are payable for permanent impairment of specified body members, functions or organs. 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 for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.¹⁴

In this case, the Office medical adviser applied the A.M.A., *Guides* and the physical findings of Dr. Potash on December 26, 1996 to find that appellant had a 50 percent impairment of the right ring finger. By applying the standards found in the A.M.A., *Guides* (4th edition), the Office medical adviser showed how he rated appellant's right ring finger, which underwent surgical repair on April 6, 1993. The Board finds that the Office medical adviser properly applied the standards found in the A.M.A., *Guides*. The Board further finds that appellant has presented no other probative medical evidence to establish that his right ring finger impairment is greater than the 50 percent awarded.

The Board further finds that there is no further corroborating medical evidence to establish any additional injury causally related to the injury of April 6, 1993. Although appellant testified and Dr. Potash noted in his December 26, 1996 report that appellant injured his right middle finger and provided an impairment rating to the right middle finger, the record is devoid of any discussion to establish that appellant's right middle finger impairment was the result of or aggravated by the events of April 6, 1993. In his December 26, 1996 report, Dr. Potash notes

¹² 5 U.S.C. § 8107.

¹³ 20 C.F.R. § 10.304 (1998).

¹⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

that appellant's past medical history is remarkable for fractured middle, ring and little finger not work related. Although Dr. Potash identified an impairment to the right middle finger, his report fails to contain an accurate discussion of appellant's prior injuries involving the fractured middle, ring and little finger or to establish that the laceration of the middle finger resulted in an impairment causally related to the injury of April 6, 1993.¹⁵ Accordingly, there is no factual basis upon which to dispute the impairment calculation determined by the Office medical adviser as injury to the right middle finger has not been substantiated as being causally related to the April 6, 1993 injury. Additionally, there is no factual basis upon which to demonstrate that the effect of the April 6, 1993 employment injury caused a permanent impairment of the hand or upper extremity.

The decisions of the Office of Workers' Compensation Programs dated February 8, 1999 and June 2, 1998 are affirmed.

Dated, Washington, D.C.
August 24, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

¹⁵ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).