

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANFORD K. JONES and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 99-2060; Submitted on the Record;
Issued September 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant is entitled to a schedule award for his right thumb.

On October 23, 1986 appellant filed a claim for an injury to his right thumb sustained on October 19, 1986 by keying mail. On January 22, 1987 appellant filed a claim for "tendinitis, developing into carpal tunnel syndrome." Appellant stated that he first realized this condition was caused or aggravated by his employment on October 19, 1986 when he began having intermittent pain and triggering in his thumb while keying mail. On January 29 and June 2, 1988 appellant filed claims for a schedule award. On October 7, 1994 the Office of Workers' Compensation Programs issued appellant a schedule award for a 19 percent permanent loss of use of her right arm and a 23 percent permanent loss of use of her left arm. These awards were issued under a separate file number in appellant's claim for carpal tunnel syndrome.

On July 25, 1998 appellant filed another claim for a schedule award. By letter dated March 26, 1998, the Office advised appellant of the information needed from his physician to establish entitlement to a schedule award. Appellant submitted a report dated April 9, 1998 from his attending physician, Dr. Earl Z. Browne, Jr. In this report Dr. Browne stated:

"In response to your letter of March 26, 1998, [appellant] has long ago achieved a stable plateau as has been communicated to your office on numerous occasions by having modification of his job to allow him to be able to perform in a reasonable fashion. He does not have any loss of range of motion such as would be evaluated by the American Medical Association, (A.M.A.,) *Guides to [the Evaluation of] Permanent Impairment*, therefore, section B of your letter is not applicable. He does have, in relation to section C, the use of a wrist splint and he has been using this for quite a long period of time. As stated on other communications, especially the CA-20, he will continue to be stable because of workplace modifications and avoidance of repetitive motion, however, his

condition of chronic tenosynovitis will persist forever. Hopefully, it will be able to remain under control.”

By letter dated June 30, 1998, the Office stated, “In considering the fact that you have already received a schedule award for bilateral carpal tunnel syndrome residuals, for the right and left arms, it is not clear why you are now filing for a schedule award on this claim.” The Office requested that appellant advise what he was filing for and repeated this request in an August 10, 1998 letter. The Office allotted appellant 30 days within which to respond.

By decision dated September 28, 1998, the Office found that there was “no medical basis for entitlement to a schedule award due to the October 19, 1986 work-related conditions.” Appellant requested a hearing, which was held on February 22, 1999. By decision dated April 30, 1999, an Office hearing representative found that appellant was not entitled to a schedule award for his right thumb in addition to the schedule award he had already received under a separate claim for a 19 percent permanent impairment of the right upper extremity. The Office hearing representative stated:

“Since the right upper extremity includes the right thumb, the previous award included any impairment to the claimant’s right thumb as a result of the October 19, 1986 employment injury. ... Furthermore, Dr. Browne’s report makes it clear that the claimant does not have *any* permanent, partial impairment of his right thumb.” (Emphasis in the original.)

The Board finds that appellant is not entitled to a schedule award for his right thumb.

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use of, specified 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 all claimants. The A.M.A., *Guides* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

In support of his February 25, 1998 claim for a schedule award, appellant submitted a report dated April 9, 1998 from his attending physician, Dr. Browne. This report stated that, appellant had no loss of motion or other impairment ratable using the A.M.A., *Guides*. The only impairment reported by Dr. Browne was appellant’s use of a wrist splint and the A.M.A., *Guides* do not provide for any percentage to be applied to this.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

The other basis of the Office hearing representative's decision -- that appellant was not entitled to a schedule award for the right thumb because he already received a schedule award for the right arm -- is erroneous. While an award for an arm may include an impairment of the thumb, the case record does not contain the medical reports that formed the basis of the Office's schedule award for the arm and the Board is thus unable to ascertain if the 19 percent schedule award for appellant's right arm included any impairment of the thumb. However, as appellant has not submitted evidence that he has a permanent impairment of the thumb, the Office's decision will be affirmed.

The decisions of the Office of Workers' Compensation Programs dated April 30, 1999 and September 28, 1998 are affirmed.

Dated, Washington, D.C.
September 11, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member