United States Department of Labor
Employees' Compensation Appeals Board

CHARLES DONALDSON, Appellant	)	
and	)	**Docket No. 04-2217**
	)	**Issued: April 15, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Aurora, IL, Employer	)	

Appearances:
Charles Donaldson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 10, 2004 appellant filed a timely appeal from a February 26, 2004 merit decision of the Office of Workers' Compensation Programs granting him a schedule award for a 16 percent permanent impairment of the left upper extremity. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he has more than a 16 percent impairment of the left upper extremity for which he received a schedule award.

FACTUAL HISTORY

On June 15, 2003 appellant, then a 57-year-old maintenance mechanic, filed a traumatic injury claim alleging that on June 14, 2003 while removing a defective gas spring from a trailer lock, the lock mechanism fell on his hand, crushing the bone and lacerating his thumb. The Office accepted his claim for a fracture of the left thumb with tendon laceration with open reduction. Appellant underwent surgery on June 14, 2003 for open reduction of the left thumb

metacarpal shaft fracture, left thumb debridement and repair of the left thumb extensor pollicis brevis.

Appellant subsequently filed a claim for a schedule award.

In a September 23, 2003 report, Dr. Mary Ling, appellant's attending surgeon, stated that appellant had reached maximum medical improvement. She noted the following range of motion findings of the left thumb joints; metacarpophalangeal (MP) joint 10 to 30 degrees, interphalangeal (IP) joint, 0 to 35 degrees: range of motion findings of the wrist; 60 degrees of palmar flexion and 60 degrees of dorsiflexion. Grip strength on the left was 26 and 28 kilogram (kg) force. Sensation was grossly intact to light touch and capillary refill was one to two seconds. She noted that he was mildly tender in the distal aspect of the metacarpal. Dr. Ling found pin on direct pressure and passive motion.

In a report dated November 23, 2003, an Office medical adviser applied the findings of Dr. Ling to the fifth edition of the A.M.A., *Guides* and determined that appellant had a 16 percent impairment of the left upper extremity.

By decision dated February 26, 2004, the Office granted appellant a schedule award for a 16 percent impairment of the left upper extremity for 12 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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 all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[3]

ANALYSIS

The Office determined that appellant had a 16 percent permanent impairment based on the findings of Dr. Ling, appellant's attending surgeon. The Office medical adviser applied the findings of Dr. Ling to the A.M.A., *Guides* (5th ed. 2001) and indicated that appellant had MP joint extension of 10 degrees for a 1 percent impairment, and flexion of 30 degrees for a 3 percent impairment, using Figure 16-15, page 457, and IP joint extension of 0 degrees for a 1 percent impairment and flexion of 35 degrees for a 3 percent impairment using Figure 16-12,

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] *Willie C. Howard*, 55 ECAB ___ (Docket No. 04-342 & 04-464, issued May 27, 2004).

page 456, of the A.M.A., *Guides.* This equaled an 8 percent thumb impairment which equaled a 3 percent impairment of the hand which equaled a 3 percent impairment of the left upper extremity pursuant to Table 16-1 page 438, and Table 16-2, page 439. Appellant's grip strength of 27 kg average equaled 37 percent strength loss which equaled a 12 percent left upper extremity impairment, Table 16-32, Table 16-34, page 509. The Office medical adviser also found a 1 percent impairment due to Grade 4 pain in the distribution of the radial nerve to the dorsum of the left thumb under Table 16-10, page 482; Table 16-15, page 492.

However, the Board notes that the A.M.A., *Guides* provide for limited circumstances where grip strength can be the basis for rating strength loss; neither Dr. Ling nor the Office medical adviser has provided any explanation of why impairment based on diminished grip strength should apply in light of the restrictions set forth in the A.M.A., *Guides*.[4] Thus, the Office medical adviser improperly combined appellant's impairment rating of 12 percent for grip strength loss to the impairment rating for loss of range of motion. However, the remaining impairment rating data was properly determined based on the A.M.A., *Guides*. Consequently the Board finds that the evidence does not establish that appellant sustained an impairment of greater than 16 percent of the right arm for which the Office has issued a schedule award.

CONCLUSION

The Board finds that appellant is not entitled to more than a 16 percent schedule award for the right upper extremity.

[4] Pursuant to section 16.8a of the A.M.A., *Guides*, an impairment based on grip strength is allowable only under circumstances where the examiner believes the employee's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*. *See* A.M.A., *Guides*, page 508. This case does not present such a circumstance. An example of this situation would be loss of strength caused by a severe muscle tear that healed leaving "a palpable muscle defect." If the rating physician determines that loss of strength should be rated separately in an extremity that presents other impairments, "the impairment due to loss of strength could be combined with the other impairments, only if based on unrelated etiologic or pathomechanical causes. Otherwise, the impairment ratings based on objective anatomic findings take precedence." Dr. Ling did not mention any such additional impairing factors due to loss of strength in her September 23, 2003 report.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 26, 2004 is affirmed as modified.[5]

Issued: April 15, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] The Board notes that this case record contains evidence which was submitted subsequent to the Office's February 26, 2004 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).