

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

MILTON E. RUSS, II, Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Capitol Heights, MD,)
Employer)

**Docket No. 05-487
Issued: February 2, 2006**

Appearances:

Merri Lane, Esq., for the appellant

Melissa Bowman, Esq., for the Director

Oral Argument January 4, 2006

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 21, 2004 appellant filed a timely appeal of a November 2, 2004 merit decision of a hearing representative of the Office of Workers' Compensation Programs which affirmed an April 1, 2004 schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this schedule award decision.

ISSUE

The issue is whether appellant has established that he sustained more than a two percent impairment of the left thumb, for which he received a schedule award.

FACTUAL HISTORY

On December 24, 2001 appellant, a 53-year-old labor custodian, filed a traumatic injury claim alleging that he injured his left thumb on that date when it was jammed in a paper towel door. The Office accepted the claim for left thumb sprain.

On June 23, 2003 appellant filed a claim for a schedule award.

In a report dated January 7, 2004, Dr. Ricardo O. Pyfrom, a treating Board-certified orthopedic surgeon, diagnosed a “chip fracture of the distal phalanx at the base of the left thumb” based upon a review of x-ray films. He noted that appellant was initially diagnosed with a left thumb sprain and “IP [interphalangeal] joints with a chip fracture.” Based upon a June 27, 2002 magnetic resonance imaging (MRI) scan, Dr. Pyfrom determined that appellant had “chronic post-traumatic weakness of the radial collateral ligament in the left thumb MCP [metacarpophalangeal] joint” due to the December 23, 2001 employment injury. With regard to an impairment rating, he determined that appellant had a two percent impairment of the thumb based upon 0 to 40 degrees flexion of the MCP joint. Dr. Pyfrom noted that appellant’s total pinch strength of his left hand was five pounds. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.), he determined that he had a 30 percent upper extremity impairment due to loss of pinch strength. He noted that appellant had 69 percent grip strength loss which “equals a 40 [percent] upper extremity impairment for pinch loss.” Dr. Pyfrom totaled appellant’s impairment due to pinch strength and thumb impairment to arrive at a 31 percent left upper extremity impairment rating.

In a February 18, 2005 memorandum, the Office requested that an Office medical adviser review Dr. Pyfrom’s impairment rating. In a report dated March 3, 2004, Dr. Willie E. Thompson, a Board-certified orthopedic surgeon and Office medical adviser, concluded that appellant had a two percent impairment of his left thumb. Dr. Thompson noted that appellant’s claim had been accepted for a left thumb sprain. He disagreed with Dr. Pyfrom’s determination that appellant had a 31 percent impairment of the left upper extremity. The Office medical adviser stated that this was “clearly an excessive rating” and that the impairment rating of Dr. Pyfrom for a sprain at the base of the thumb ligament nearly equated to a rating which would be appropriate for a total amputation of the thumb. He further noted:

“The basis for the impairment rating put forth is that of weakness in pinch. The calculations put forth by Dr. Pyfrom are totally inaccurate. He indicates that there is weakness of pinch by 2.3 kilograms on the left side as opposed to 3.4 kilograms on the uninjured right side. [Dr. Pyfrom] indicates that this is a 69 percent strength loss. This is clearly incorrect mathematically. He also indicates that there is a 2 percent impairment rating for loss of motion at the metacarpophalangeal (MCP) joint to 40 degrees. Please note that a pure ligamentous sprain to the radial collateral ligament to the thumb in no way affects pinch strength. This is clearly not a basis for an impairment rating in this individual. [Dr. Pyfrom] does indicate that the loss of motion at the MCP joint is 0 to 40 degrees. I have referenced the [f]ifth [e]dition of the A.M.A., *Guides* in regards to the motion at this thumb. Forty degrees of flexion at the MCP joint of the thumb results in two percent impairment to the thumb. For the specific reference, please see the [f]ifth [e]dition of the A.M.A.’s *Guides*, [p]age 457, Chapter 16, Figure 16-15 under the heading of thumb impairments due to abnormal motion at the anterior-posterior (AP) joint.”

On April 1, 2004 the Office issued a schedule award for two percent impairment of the left thumb. The award was for 1.5 weeks of compensation, to be paid from December 24, 2002 to January 3, 2003. In a letter dated April 9, 2004, appellant requested a review of the written

record by an Office hearing representative. He noted that Dr. Pyfrom clearly indicated that he also sustained a fracture of his left thumb in addition to the left thumb sprain.¹

By decision dated and finalized November 2, 2004, the Office hearing representative affirmed the Office's April 1, 2004 schedule award determination, finding that appellant sustained no more than a two percent impairment of his left thumb. The hearing representative found that Dr. Thompson properly utilized the correct tables and grading schemes of the fifth edition of the A.M.A., *Guides* in determining that appellant had a two percent impairment of the left thumb.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ 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 how 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 and guidelines so that there are uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* as the appropriate standard for evaluating scheduled losses. As of February 21, 2001, the Office uses the fifth edition of the A.M.A., *Guides* to calculate new claims for a schedule award or to recalculate prior schedule awards pursuant to an appeal, request for reconsideration or decision of an Office hearing representative.⁴

ANALYSIS

In this case, appellant has the burden of proof to submit medical evidence demonstrating that he sustained greater than a two percent impairment of the left thumb according to the tables and grading schemes of the A.M.A., *Guides*.

Appellant submitted a January 7, 2004 report from Dr. Pyfrom, who concluded that he had a 31 percent left upper extremity impairment. The Board notes that Dr. Pyfrom failed to explain, with specific reference to the tables of the A.M.A., *Guides*, how he arrived at the impairment rating. This impairment estimate does not conform to the A.M.A., *Guides*, as it does not address the applicable tables and charts of the A.M.A., *Guides*. The Board has held that an

¹ The Board notes that, while Dr. Pyfrom diagnosed a fracture, this condition was never accepted by the Office.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ See *Peter C. Belking*, 56 ECAB ____ (Docket No. 05-655, issued June 16, 2005); FECA Bulletin 01-05 (issued January 29, 2001) (awards calculated according to any previous edition should be evaluated according to the edition originally used; any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

attending physician's report is of diminished probative value where the A.M.A., *Guides* are not properly followed.⁵

Dr. Thompson, the Office medical adviser, properly utilized the physical findings reported by Dr. Pyfrom and correlated them to the specific provisions of the A.M.A., *Guides* (5th ed. 2001) to determine the impairment rating. He noted that appellant's "loss of motion at the MCP joint is 0 to 40 degrees to his left thumb" resulted in a two percent impairment of his left thumb. In reaching this determination, Dr. Thompson utilized Figure 16-15 of the A.M.A., *Guides*. The Office medical adviser further noted that Dr. Pyfrom's determination that appellant sustained a 30 percent impairment for loss of grip strength was improper as a "pure ligamentous sprain to the radial collateral ligament to the thumb in no way affects pinch strength." Where the Office medical adviser provides the only evaluation that conforms with the A.M.A., *Guides*, such an evaluation constitutes the weight of the medical evidence.⁶

The Office medical adviser properly applied the A.M.A., *Guides* to the medical evidence and found a two percent impairment of the left thumb. There is insufficient medical evidence to establish more than a two percent impairment of the left thumb.

CONCLUSION

The Board finds that appellant has not established that he sustained more than a two percent impairment of the left thumb, for which he received a schedule award.

⁵ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (a medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

⁶ *John L. McClenic*, 48 ECAB 552 (1997); *Michael C. Norman*, 42 ECAB 768 (1991); *Bobby L. Jackson*, 40 ECAB 593 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 2, 2004 is affirmed.

Issued: February 2, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board