

The issue is whether appellant has more than a four percent impairment of his right upper extremity, for which he received a schedule award.

## **FACTUAL HISTORY**

On February 13, 2006 appellant, then a 28-year-old federal air marshal, sustained injury to his right wrist and thumb when he slipped on icy pavement in an employee parking lot and fell. The Office accepted the claim for acute gamekeeper's injury of the right thumb.<sup>1</sup>

On October 8, 2007 Dr. Michael J. Platto, a Board-certified physiatrist, provided an assessment of the permanent impairment to appellant's right thumb. Appellant complained of pain on palpation over the base of the right thumb at the metacarpophalangeal (MP) joint. Dr. Platto also noted right thumb instability with abduction. He stated that appellant exhibited full active range of motion of both shoulders, elbows and the wrists and that motor strength was 5/5 in both extremities. Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001), Dr. Platto stated:

“Measurement of IP [interphalangeal] flexion of the thumb is 40 degrees, 60 degrees, 58 degrees on successive trials. This corresponds to one percent impairment level according to Figure 16-12, page 456. IP extension measures 35 degrees, 40 degrees, 38 degrees which is 0 percent impairment level according to Figure 16-12, page 456. Flexion of the thumb MP joint measures 68 degrees, 58 degrees, 58 degrees which is 0 percent impairment, and extension of the thumb MP joint measures 25 degrees, 22 degrees, 25 degrees which is 0 percent impairment according to Figure 16-13 page 456. Thumb radial abduction measures 65 degrees on three successive trials. This corresponds to a 0 percent impairment level according to Table 16-8A, page 45[9]. Thumb radial adduction lacks 4.5 centimeters which corresponds to a 5 percent impairment level according to [Table] 16-8B, page 459.... Note, according to Table 16-23, ‘Joint Impairment Due to Excessive Passive Medial and Lateral Instability,’ page 502, this is a 15 percent or moderate joint instability, 40 percent joint impairment. According to Table 16-18, page 499, the MP joint of the thumb represents a 15 percent impairment of the thumb ray unit. 40 percent x 15 percent is a 6 percent impairment of the thumb which according to Table 16-1, page 438, would be a 3 percent impairment of the hand. According to Table 16-2, page 439, 3 percent of the hand is 3 percent [impairment] of upper extremity, and 3 percent of upper extremity by Table 16-3, page 439 is 2 percent of whole person....”

He added the one percent IP flexion impairment to the five percent radial impairment which equals six percent impairment for loss of range of motion. Dr. Platto added an additional six percent due to instability. Using the Combined Values Chart, he found a total nine percent thumb impairment by combining the six percent loss of range of motion to the six percent impairment for instability or a four percent impairment of the right upper extremity using Table 16-2, page 439.

On October 23, 2007 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and an Office medical adviser, agreed with the impairment rating of Dr. Platto.

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<sup>1</sup> On March 6, 2006 appellant underwent surgical repair for the gamekeeper's injury.

By decision dated January 31, 2008, the Office granted appellant a schedule award for a four percent permanent impairment of his right upper extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup> Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>5</sup>

### **ANALYSIS**

The Office accepted that appellant sustained acute gamekeeper's injury of the right thumb. On January 31, 2008 appellant was granted a schedule award for a four percent permanent impairment of his right upper extremity. The Office based the schedule award on the report of Dr. Platto, appellant's attending Board-certified physiatrist, who examined appellant and rated impairment based on loss of range of motion to the right thumb as five percent impairment for right thumb adduction and one percent impairment for IP flexion, or six percent impairment of the thumb based upon loss of range of motion. Using Table 16-1, page 438, Dr. Berman determined that four percent thumb impairment equaled two percent hand impairment and a one percent upper extremity. However, he does not appear to include the impairment rating for the thumb instability as noted by Dr. Platto.

Dr. Platto concluded that appellant had six percent impairment due to instability using Table 16-18, page 499. With respect to range of motion, he determined that appellant had a one percent impairment for loss of flexion using Table 16-12, page 456 and a five percent impairment for radial thumb adduction using Table 16-8A, page 459 resulting in a total six percent impairment. Dr. Platto used the Combined Values Chart at page 604, to find a nine percent thumb impairment by combining the six percent impairment for range of motion to the six percent impairment for instability. He then determined a nine percent thumb impairment equaled a four percent impairment of the hand using Table 16-1, page 438. Using Table 16-2, page 493, Dr. Platto concluded a four percent impairment of the hand equaled a four percent upper extremity impairment.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> 20 C.F.R. § 10.404. See *J.C.*, 58 ECAB \_\_\_\_ (Docket No. 07-1165, issued September 21, 2007); *Thomas O. Bouis*, 57 ECAB 602 (2006).

<sup>5</sup> 20 C.F.R. § 10.404; see *E.P.*, 58 ECAB \_\_\_\_ (Docket No. 07-1244, issued September 25, 2007); *Jesse Mendoza*, 54 ECAB 802 (2003).

The Board notes that, while Dr. Platto properly calculated the range of motion findings for each component of the right thumb and the instability to the thumb, he incorrectly determined that these findings combined to total a nine percent permanent impairment of the right thumb. Using the Combined Values Chart at page 604, 6 percent impairment for range of motion combined with 6 percent impairment for joint instability equals 12 percent thumb impairment, not 9 percent impairment as found by Dr. Platto. According to Table 16-1, 12 percent thumb impairment equals 5 percent hand impairment according to Table 16-1, page 438. Using Table 16-2 at page 439 a five percent hand impairment converts to a five percent impairment of the upper extremity. The Board finds that, under the A.M.A., *Guides* appellant has a five percent impairment of the right upper extremity, one percent greater than that awarded by the Office.

### **CONCLUSION**

The Board finds that appellant has a five percent impairment of the right upper extremity.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 31, 2008 is affirmed, as modified.

Issued: November 12, 2008  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board