

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLORENCE W. ABEL and U.S. POSTAL SERVICE,
POST OFFICE, Reno, NV

*Docket No. 98-2258; Submitted on the Record;
Issued February 23, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained greater than a 39 percent permanent impairment of the right hand for which she received schedule awards.

On June 3, 1991 appellant, then a 61-year-old general clerk, filed an occupational disease claim for injury to her right trigger finger, *i.e.*, thumb, beginning January 10, 1991. The Office of Workers' Compensation Programs accepted appellant's claim for trigger finger syndrome. By decision dated January 27, 1993, appellant received a schedule award for a 36 percent permanent impairment of her right hand for 87.84 weeks of compensation for the period August 17, 1992 to April 23, 1994.

On June 14, 1996 appellant filed a notice of traumatic injury and claim, alleging that she sustained a torn ligament in her right thumb due to factors of her federal employment. She stopped work June 28, 1996. The Office accepted appellant's claim for right thumb strain, right thumb dislocation and authorized surgery for repair of a tear in the avulsion ulnar collateral ligament of the right thumb.¹ On June 27, 1996 appellant filed a claim for a schedule award. By decision dated November 26, 1997, the Office determined that appellant had a total impairment of 39 percent to her right hand based on the second opinion examination and report of Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and the report of Dr. Ellen Pichey, a district medical consultant.² As appellant had previously been awarded a schedule award for a 36 percent permanent impairment of her right hand, the Office granted appellant a schedule award which reflected an additional 3 percent permanent impairment of her right hand. Thus appellant was granted 7.32 weeks of compensation for the period August 1 to September 21, 1997.

On January 8, 1998 appellant underwent surgery on her right hand to remove the hardware, *viz.*, Kirschner wire and cerclage wire, from the metacarpophalangeal (MP) joint of

¹ The Office combined these claims on or about July 25, 1996. Appellant retired effective October 3, 1996.

² Dr. Pichey is Board certified in family and preventative medicine.

the right thumb. On March 27, 1998 appellant filed another claim for a schedule award. She urged that her pain in undergoing surgery and the disfigurement to her hand had not been considered in assessing the amount of her schedule awards. The Office further developed the medical evidence in light of the new procedure on appellant's hand. By decision dated June 18, 1998, the Office found that there was no basis to modify appellant's schedule award on the grounds that the medical evidence did not establish any new impairment and stated that disfigurement to the hand is not compensable under the Federal Employees' Compensation Act and noted that pain was considered via sensory loss.

The Board has duly reviewed the case record in the instant appeal and finds that appellant has not established greater than a 39 percent permanent impairment of her right hand for which she received schedule awards.

Section 8107 of the Act³ and its implementing regulation⁴ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.⁵

In the present case, the Office initially granted appellant a 36 percent schedule award due to permanent loss of use of her right hand. In November 1997, the Office modified that award, finding that appellant had a 39 percent permanent impairment of the right hand due to her new injury June 14, 1996 and based on the report of Dr. Swartz, who diagnosed status post fusion with chronic postoperative inflammatory changes including flexor tendinitis of the right thumb, primarily involving the interphalangeal (IP) joint, subjective factors including right thumb pain with pinch, grasp and removing jar lids and objective findings of disability due to fusion of the MP joint, the dorsal scar, erythema and swelling. He found a 20 percent impairment due to loss of function from decreased strength and 20 percent due to sensory deficit or pain for a combined total of 49 percent of the right thumb.

This report was reviewed by Dr. Pichey who provided the following calculations based on a review of the fourth edition of the A.M.A., *Guides*: sensory loss with 2-point discrimination of 12 mm equals a 25 percent thumb impairment under Figure 7; MP joint ankylosis provides a 6 percent permanent impairment pursuant to Figure 13; loss of IP joint flexion equals a 4 percent permanent impairment in accordance with Figure 10; loss of radial abduction provides a 7 percent permanent impairment under Table 6; loss of abduction equals a 4 percent impairment pursuant to Table 5; and loss of opposition provides a 9 percent permanent impairment pursuant to Table 7. She concluded that appellant had a total thumb permanent

³ 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.304.

⁵ *Quincy E. Malone*, 31 ECAB 846 (1980).

impairment of 55 percent which is the equivalent of a 22 percent impairment of the right hand in accordance with Table 1. Dr. Pichey then calculated that appellant's loss of grip strength in the index finger was 55 percent or a 20 percent impairment of the upper extremity as per Table 34 or 22 percent of hand as per Table 2. She therefore properly found a combined total of 39 percent permanent impairment of the right hand with a date of maximum medical improvement of August 1, 1997. As Dr. Pichey provided clear findings in accordance with the A.M.A., *Guides* from review of the report of Dr. Swartz and has fully explained the basis for her conclusions, the Office properly relied on this report from Dr. Pichey and accorded it determinative weight. Appellant has not established that she sustained greater than a 39 percent permanent impairment of her right hand for which she received schedule awards.

Thereafter, when appellant underwent reexamination by Dr. Swartz after her surgical procedure to remove the hardware in her thumb, Dr. Swartz found no atrophy of the upper extremity, 4/5 motor strength, right thumb flexors with average grip of 13 percent. She noted that the only change in appellant's degree of impairment between her October 4, 1997 report and her current May 30, 1998 report was that appellant's two-point discrimination testing was now normal. Dr. Pichey reviewed this report and concurred that, as a result of the new procedure, appellant's sensory findings were now normal. Thus, appellant did not demonstrate any additional impairment due to the authorized surgery. In addition, as noted by the Office, appellant cannot receive a schedule award for disfigurement of her hand and her degree of pain has previously been assessed and compensated in prior schedule awards. Consequently, the Office properly did not modify the schedule award.

The decisions of the Office of Workers' Compensation Programs dated June 18, 1998 and November 26, 1997 are hereby affirmed

Dated, Washington, D.C.
February 23, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member