

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE M. HUNT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Kansas City, MO

*Docket No. 00-2790; Submitted on the Record;
Issued July 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained more than an 18 percent permanent impairment of her right thumb, for which she received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant sustained no more than an 18 percent permanent impairment of her right thumb.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.³

The schedule award provision of the Act⁴ and its implementing regulation⁵ 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*

¹ 5 U.S.C. §§ 8101-8193.

² See *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ See *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

Impairment has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from the attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."⁶ This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁷

On February 12, 1998 appellant, then a 67-year-old retired medical administration specialist, filed an occupational disease claim alleging that she sustained an injury to her right thumb causally related to factors of her employment. On December 9, 1998 the Office of Workers' Compensation Programs accepted appellant's claim for right thumb osteoarthritis.

On December 17, 1998 appellant filed a claim for a schedule award. By decision dated May 7, 1999, the Office granted appellant a schedule award for 13.50 weeks based on an 18 percent permanent impairment of the right thumb.

By letter dated December 13, 1999, appellant requested reconsideration.

By decision dated March 10, 2000, the Office denied appellant's request for reconsideration.

By letter dated April 20, 2000, appellant again requested reconsideration.

By decision dated June 9, 2000, the Office denied appellant's request on the grounds that the evidence submitted was insufficient to warrant modification of its May 7, 1999 decision.

In a report dated August 24, 1998, Dr. Edward J. Prostig, a Board-certified orthopedic surgeon, stated that appellant had some deformity of her thumb, increased pain with active use of her hand and difficulty opening pill containers, bottles and jars. He further stated:

"Right upper extremity: The alignment is satisfactory, there is obvious deformity of the thumb with hypertrophy of the basal joint. There is no heat, swelling, erythema, or atrophy obvious. Circumference of the right forearm is equal to that of the nondominant left. Range of motion and stability of all joints are satisfactory but for the thumb which has very limited motion at the basal joint. Pinch is satisfactory but for the thumb which is markedly weakened. [Appellant]

⁶ Federal (FECA) Procedure Manual, Part -- 2 Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); see *John H. Smith*, 41 ECAB 444, 448 (1990).

⁷ See *Alvin C. Lewis*, 36 ECAB 595-96 (1985).

has only 9 kilograms of grip on the right compared to 15 on the left. Two point sensory discrimination is poor in all digits. The Tinel[’s] test is negative at the carpal tunnel as is Phalen’s maneuver. Testing for pronator syndrome is negative.

“X-RAYS: Multiple projections are taken of the right hand. There is moderately advanced osteoarthritis of the basal joint of the thumb with mild changes at the DIP [distal interphalangeal] joints as well.

“COMMENT: During the course of her employment through 1996, [appellant] sustained repeated minor trauma to her right hand causing or contributing to basal joint weakness of the thumb. She has marked restriction of the thumb and substantial weakness of pinch and grip. Permanent partial disability is rated at 20 percent of the forearm. This rating is based upon the A.M.A., *Guides*, 4th edition.”

The opinion of Dr. Prostic is of limited probative value because that he failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.⁸ Although Dr. Prostic stated that he applied the A.M.A., *Guides* in making his impairment determination, he did not explain, with specific reference to tables and figures in the A.M.A., *Guides*, exactly how he determined the 20 percent impairment rating.

In a report dated February 9, 1999, Dr. James S. Zarr, a Board-certified psychiatrist and Office referral physician, stated:

“Examination of [appellant’s] hand does show osteoarthritic joint deformities diffusely throughout all the major joints. Turning to the right thumb range of motion: the IP [interphalangeal] joint flexion is 76 [degrees], extension is full to 0 [degrees]. The MP [metacarpophalangeal] joint flexion is 45 [degrees] and the extension is full to 0 [degrees]. Right thumb adduction as measured according to the revised Third Edition of the [A.M.A., *Guides*]⁹ and as described in table 5 of page 23 is 1.5 cm [centimeters]. Radial abduction is 60 [degrees]. Thumb opposition as measured according to figure 16 on page 24 is 5 cm. Sensory testing is within normal limits around the entire thumb. Grip strength using the dynamometer is 20 pounds with the right hand, which is her dominant/ major hand. There is no redness, warmth, or swelling of the major joints of the right thumb. There is no joint crepitation with range of motion of the right thumb. There is no joint swelling due to synovial hypertrophy. There is no digital rotational deformity. There is no ulnar or radial deviation. There is no persistent subluxation and dislocation. There is no joint instability. [Appellant] did not

⁸ See *James Kennedy, Jr.*, 40 ECAB 620, 627 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant’s permanent impairment).

⁹ In a March 3, 1999 memorandum, Dr. Daniel D. Zimmerman, the Office’s district medical director, noted that the applicable edition of the A.M.A., *Guides* in this case was the fourth edition, not the third edition, revised.

exhibit much pain behavior when examining and moving the joints of her right thumb but she does relate that she does get pain in her right thumb with various work activities.”

Dr. Zarr stated that appellant had persistent right thumb pain secondary to osteoarthritis. He stated that she had a one percent impairment of the right thumb IP joint based on 0 degrees of extension,¹⁰ a one-half percent impairment based on 76 degrees of flexion,¹¹ 1.5 percent impairment based on 45 degrees of flexion of the thumb MP joint,¹² one-half percent impairment for 1.5 centimeters of thumb adduction,¹³ and 5 percent impairment for 5 centimeters of thumb opposition.¹⁴ Dr. Zarr totaled the impairments for loss of range of motion of the thumb at 8.5 percent. He found no impairment for weakness, stating that appellant “had good strength on manual muscle testing but had some grip weakness which seemed more related to pain than to true muscular weakness. Therefore, weakness is 0 percent.” Regarding pain, Dr. Zarr stated:

“Page 46, [T]able 14 which gives me latitude anywhere from 0 to 20 percent for the radial side of the thumb and 0 to 30 percent for the ulnar side of the thumb. I would render 5 percent impairment based on the pain behavior I saw and was described to me. The 5 percent would be for the radial side and another 5 percent for the ulnar side of the thumb, which would total to a 10 percent pain impairment at the level of the digit.”

Dr. Zarr stated that he rounded the 8.5 percent range of motion impairment to 9 percent and combined this, based on the Combined Values Chart in the A.M.A., *Guides*, with the 10 percent impairment due to pain and arrived at a total impairment of the right thumb of 19 percent.¹⁵

In memoranda dated March 3, 1999 and May 24, 2000, Dr. Zimmerman stated, as noted above, that the applicable edition of the A.M.A., *Guides* in this case was the Fourth Edition, not the Third Edition, Revised, which was used by Dr. Zarr, but that the determination of appellant’s impairment was the same in both editions. He stated that appellant had an 18 percent permanent impairment of the right thumb, rather than 19 percent, as stated by Dr. Zarr, based upon correct application of the Combined Values Chart.¹⁶

¹⁰ A.M.A., *Guides*, 4th ed., 26, Figure 10 (3^d ed. rev., 21).

¹¹ *Id.*

¹² A.M.A., *Guides*, 27, Figure 13 (3^d ed. rev., 22).

¹³ A.M.A., *Guides*, 28, Table 5 (3^d ed. rev., 23).

¹⁴ A.M.A., *Guides*, 29, Table 7 (3^d ed. rev., 24).

¹⁵ In a January 13, 1999 memorandum, Dr. Zimmerman noted that the fourth edition of the A.M.A., *Guides* did not provide for consideration of pain, sensory deficit and weakness at the digit level and, therefore, Table 14 of the third edition, revised should be used for this aspect of impairment.

¹⁶ The Combined Values Chart at page 322 of the A.M.A., *Guides*, 4th ed., provides that a 10 and 9 percent impairment are *combined*, not added, for an 18 percent total impairment.

Dr. Zarr's February 9, 1999 report provided the only evaluation which conformed to the A.M.A., *Guides* and thus constitutes the weight of the medical evidence.¹⁷ There is no medical evidence of record, based upon correct application of the A.M.A., *Guides*, establishing that appellant has more than an 18 percent permanent impairment of the right thumb.

The June 9 and March 10, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
July 17, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁷ See *Michael C. Norman*, 42 ECAB 768 (1991).