

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHERMAN C. WEST and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Albany, GA

*Docket No. 02-2101; Submitted on the Record;  
Issued January 24, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has more than a three percent impairment of the right hand for which he received a schedule award.

On October 26, 1998 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim alleging that on that date he injured his right hand while loading his truck. The Office of Workers' Compensation Programs accepted appellant's claim for a fractured metacarpal of the right hand and authorized surgery.

On May 4, 1999 Dr. Bennett D. Cotton, Jr., appellant's attending orthopedic surgeon, performed surgery consisting of a synovectomy of the trapeziometacarpal joint of the right thumb, excision of nonunion fragment of the right thumb and reconstruction of the ulnar collateral ligament of the right thumb.

On November 16, 2000 Dr. Cotton performed right thumb carpometacarpal (CMC) arthrodesis.

In a report dated January 11, 2002,<sup>1</sup> Dr. Cotton indicated that appellant had a seven percent permanent impairment of the right thumb according to the A.M.A., *Guides*, fourth edition, due to a fused CMC joint based on Figure 14 at page 3/28 of the fourth edition of the A.M.A., *Guides*.<sup>2</sup> He indicated that this equated to a three percent impairment of the right hand or a three percent impairment of the upper extremity or a two percent impairment of the whole person.

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<sup>1</sup> Although Dr. Cotton indicated the date as January 11, 2001, it is clear from the record that he meant January 11, 2002.

<sup>2</sup> Dr. Cotton did not provide specific measurements for range of motion.

In a memorandum dated January 28, 2002, Dr. Harry L. Collins, an Office district medical adviser, stated that, based on Dr. Cotton's January 11, 2002 report, appellant had a seven percent permanent impairment of the right thumb for surgical fusion of the CMC joint that equated to a three percent permanent impairment of the right hand. He indicated that he had used Table 16-82 of the A.M.A., *Guides*, fifth edition in reaching his determination of appellant's impairment.

By decision dated May 2, 2002, the Office granted appellant a schedule award for 7.32 weeks based on a three percent permanent impairment of the right hand.<sup>3</sup>

The Board finds that this case is not in posture for a decision.

The schedule award provisions of the Act<sup>4</sup> and its implementing regulation<sup>5</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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In the present case, the fifth edition of the A.M.A., *Guides* provides the appropriate standards for evaluating appellant's right hand impairment in that appellant's schedule award for impairment was granted by the Office after February 1, 2002, the effective date of the fifth edition of the A.M.A., *Guides*.<sup>6</sup>

In a report dated January 1, 2002,<sup>7</sup> Dr. Cotton indicated that appellant had a seven percent permanent impairment of the right thumb according to the A.M.A., *Guides*, fourth edition, due to a fused CMC joint. He indicated that the seven percent impairment of the right thumb was derived from Figure 14 at page 3/28 of the fourth edition of the A.M.A., *Guides* and equated to a three percent impairment of the right hand<sup>8</sup> or a three percent impairment of the upper extremity,

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<sup>3</sup> The record contains additional evidence which was not before the Office at the time it issued its May 2, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> See FECA Bulletin No. 01-05 (issued January 29, 2001).

<sup>7</sup> Although Dr. Cotton indicated the date as January 11, 2001, it is clear from the record that he meant January 11, 2002.

<sup>8</sup> Where the residuals of an injury to a member of the body specified in the schedule award provisions of the Act extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm ..., the schedule award should be made on the basis of the percentage loss of use of the larger member. See *Charles B. Carey*, 49 ECAB 528, 531 (1998).

or a two percent impairment of the whole person.<sup>9</sup> However, Dr. Cotton did not use the applicable edition of the A.M.A., *Guides*, fifth edition.

In a memorandum dated January 28, 2002, Dr. Harry L. Collins, the Office's district medical adviser, stated that, based on Dr. Cotton's January 11, 2002 report, appellant had a seven percent permanent impairment of the right thumb for surgical fusion of the CMC joint according to the fifth edition of the A.M.A., *Guides* that equated to a three percent permanent impairment of the right hand. However, it is not clear from the case record exactly how Dr. Collins determined that appellant had a seven percent impairment of the right thumb. He appeared to indicate in his report that he used Table 16-82 in making his determination of impairment. However, there is no Table 16-82 in the fifth edition of the A.M.A., *Guides*. If he meant to indicate Table 16-8a, that Table involves lack of radial abduction of the thumb. However, Dr. Collins indicated that he based his determination on Dr. Cotton's January 11, 2002 report. In his January 11, 2002 report, Dr. Cotton indicated in his determination that appellant had a 7 percent impairment of the right thumb which was based on Table 14 at page 3/28 of the fourth edition of the A.M.A., *Guides*. Table 14 involves adduction of the thumb, not abduction.

As the Board is unable to determine how Dr. Collins determined appellant's degree of impairment of his right thumb, the case will be remanded for further development. Upon return of the case record, the Office should obtain a thorough medical report concerning appellant's right thumb and hand impairment with a determination of permanent impairment based on correct application of the fifth edition of the A.M.A., *Guides* with reference to the applicable tables or figures.

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<sup>9</sup> A schedule award is not payable under section 8107 of the Act for an impairment of the whole person. See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

The decision of the Office of Workers' Compensation Programs dated May 2, 2002 is set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, DC  
January 24, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member