

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRE L. STRICKLAND and DEPARTMENT OF THE ARMY,
ANNISTON ARMY DEPOT, Anniston, Ala.

*Docket No. 96-1977; Submitted on the Record;
Issued July 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record and concludes that appellant has no greater than a four percent impairment of the right hand.

On August 17, 1992 appellant, then a 44-year-old heavy mobile equipment mechanic, sustained an employment-related ulnar neuritis. On January 30, 1995 he filed a claim for a schedule award, and by decision dated July 24, 1995, the Office of Workers' Compensation Programs granted him a schedule award for a one percent permanent impairment of the right hand. Following appellant's request, a hearing was held on January 22, 1996. In a May 17, 1996 decision, an Office hearing representative found that appellant was entitled to a four percent permanent impairment of the right hand, which was granted by a June 5, 1996 Office decision. The instant appeal follows.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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. § 8107.

² 20 C.F.R. § 10.304.

*Impairment*³ (hereinafter A.M.A., *Guides*) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

The relevant medical evidence in this case includes an October 10, 1995 office note in which Dr. Morton S. Rickless, appellant's treating orthopedic surgeon, noted grip strength to be decreased but adequate with decreased sensation over the fifth finger. Following an Office request that he evaluate appellant utilizing the A.M.A., *Guides*, in an Office form dated February 27, 1995, Dr. Rickless advised that appellant had a one percent impairment of the third finger and a five percent impairment of the fourth finger, for a total impairment of six percent. In a March 27, 1995 report, an Office medical adviser evaluated appellant's impairment utilizing Dr. Rickless' findings and Table 11 of the A.M.A., *Guides* and found that a one percent neuropathy of the ring finger equaled zero percent of the hand, and a five percent neuropathy of the little finger equaled one percent of the hand. At the hearing appellant submitted an office note dated January 18, 1996 in which Dr. Rickless advised that he had evaluated appellant's impairment according to the fourth edition of the A.M.A., *Guides*, stating:

“Disability is going to be dependent on partial loss of sensation in fifth digit radial ulnar sides and partial loss of sensation on ulnar side of ring finger, that is based on a two point discrimination which was measured between 7 and 15 millimeters, as well as poor localization of abnormal response, poor localization of problem. This involves a transverse loss of fifth digit and a longitudinal loss on the ulnar side of the ring finger. According to [the A.M.A., *Guides*, he] will have a permanent partial disability of the entire fifth digit which translates to 25 percent of the amputation rate which translates to 5 percent of the hand. He has a permanent partial impairment of the ulnar border of the ring finger, one percent of digit, one percent of the hand. The two together equal six percent of the upper extremity.”

Section 3.1c of the A.M.A., *Guides* provides information regarding evaluation of sensory loss of the digits.⁵ Dr. Rickless found that appellant's two point discrimination measured between 7 and 15 millimeters which equaled a 50 percent, or partial, sensory impairment.⁶ Regarding the ring finger, Table 9 of the A.M.A., *Guides* indicates that partial longitudinal sensory loss of the ulnar digital nerve equals a 10 percent finger impairment.⁷ Table 1 indicates that a 10 percent ring finger impairment is equal to a 1 percent hand impairment.⁸ Regarding the little finger, figure 5 of the A.M.A., *Guides* indicates that a 50 percent transverse sensory loss is

³ A.M.A., *Guides* (4th ed. 1993).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ A.M.A., *Guides* at 20.

⁶ See § 3.1c, A.M.A., *Guides* at 21.

⁷ A.M.A., *Guides* at 31.

⁸ A.M.A., *Guides* at 18.

equal to a 2.5 percent impairment of the hand.⁹ When added together, the ring and little finger impairments are equal to a 3.5 percent impairment of the hand which, when rounded up, equals a 4 percent impairment of the hand. It is appellant's burden to submit sufficient evidence to establish his claim.¹⁰ While Dr. Rickless indicated that appellant had a six percent hand impairment, he did not indicate what tables and/or figures he utilized to reach this conclusion. There is, therefore, no medical evidence establishing that appellant has greater than a four percent impairment, for which he received a schedule award.

The decisions of the Office of Workers' Compensation Programs dated June 5 and May 17, 1996 and July 24, 1995 are hereby affirmed.

Dated, Washington, D.C.
July 7, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ A.M.A., *Guides* at 22.

¹⁰ See *Annette M. Dent*, 44 ECAB 403 (1993).