

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES B. CAREY and DEPARTMENT OF TRANSPORTATION,
COAST GUARD ACADEMY, New London, Conn.

*Docket No. 96-1413; Submitted on the Record;
Issued May 20, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that his 58 percent permanent impairment of the right second finger, for which he received a schedule award, extended into his right hand, resulting in an impairment of the right hand.

On May 17, 1994 appellant, a 63-year-old grounds foreman, got his right hand caught in a rope attached to a garage door, while the door was closing, partially severing the third and fourth fingers of his right hand. Appellant filed a Form CA-1, claim for continuation of pay, on May 19, 1994. On May 31, 1994 appellant underwent surgery, in which the tip of his right long finger was amputated by Dr. Thomas C. Cherry, Jr., a Board-certified plastic surgeon. Appellant's claim was accepted by the Office of Workers' Compensation Programs for fracture of the distal phalanx of the right long finger by letter dated July 28, 1994.

On June 1, 1995 appellant filed a Form CA-7, claim for a schedule award, based on loss of use of his right long finger.

In a letter dated August 22, 1994, the Office arranged an appointment for appellant with Dr. Cherry to determine the extent of his permanent partial impairment based on loss of use of his right long finger due to the May 17, 1994 employment injury.

On August 18, 1994 Dr. Cherry examined appellant to calculate an impairment rating based on appellant's accepted finger injury, in accordance with the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (4th ed 1993) (A.M.A., *Guides*). In a Form CA-1303-02 dated August 18, 1994, Dr. Cherry found that appellant retained 20 degrees flexion of the distal interphalangeal (DIP) joint, 75 degrees flexion extension of the proximal interphalangeal (PIP) joint and noted the amputation at the DIP joint for a 55 percent impairment of his ring finger.

On October 14, 1994 an Office medical adviser, Dr. Barry W. Levine, a Board-certified internist, reviewed appellant's medical records and determined that appellant had a 55 percent

permanent impairment for loss of use of his third finger or ring finger on his right hand. He calculated that the amputation at the DIP joint accounted for a 40 percent impairment of the ring finger pursuant to page 30 of the A.M.A., *Guides*, that a 75 degree flexion at the PIP joint accounted for a 15 percent impairment of the finger pursuant to page 33, figure 21 of the A.M.A., *Guides*, and that according to pages 18 to 19 of the A.M.A., *Guides*, this represented a 5 percent upper extremity impairment, or a 55 percent impairment of the ring finger. Dr. Levine adopted Dr. Cherry's finding that appellant reached maximum medical improvement on August 18, 1994.

On October 14, 1994 the Office granted appellant a schedule award for a 55 percent permanent impairment of the third finger, on his right hand for the period from August 18 to November 22, 1994, for a total of 13.75 weeks of compensation.

In a Form CA-20 dated June 19, 1995, Dr. Cherry indicated he had performed additional amputation surgery on appellant on June 7, 1995, at the distal interphalangeal joint level of his right ring finger. He found that appellant, as a result of the May 17, 1995 accepted employment injury and the subsequent amputations, now had a tight hypersensitive fingertip, with restricted use of the hand.

On October 2, 1995 Dr. Cherry submitted a medical report to the Office, indicating he had revised and updated appellant's impairment rating for his finger, and included an additional rating for his right hand. He stated that subsequent to his impairment rating of August 18, 1994, due to persistent neuroma and pain appellant underwent a revision of the amputation to a level proximal to the distal joint. Dr. Cherry stated:

"Consequently, the revision has increased the disability to his finger. The digit is now well postoperative, with resolution of the problems, for which the revision was done, but he does have a substantially different overall rating. Additionally, he has significant decrease, particularly in power grip, to the overall hand, greatly accentuated currently, because of the loss of the profundis tendon to the ring finger, and I have added an additional two percent for the loss of the overall power grip in the hand particularly noted with forcible grip of medium and large objects with twisting motions. The tendons to the small finger are relatively weak in his hand making the ring loss more notably felt.... Additionally, the proximal interphalangeal joints flexes actively to a maximum of 85 degrees but only with force or any strength to 75 degrees."

Accompanying the report was an updated disability rating sheet, dated October 2, 1995. Dr. Cherry further stated that in the report that, pursuant to the rating sheet, he had accorded appellant a 58 percent disability to the finger, which was equivalent to a 6 percent disability to the hand as a whole pursuant to the A.M.A., *Guides*. He concluded that there was an additional two percent disability to the hand overall, added for the reasons provided above, resulting in a total disability to the right hand of eight percent.

On November 7, 1995 in response to the Office's request stated in a November 1, 1995 letter, appellant filed a Form CA-7 claim for a schedule award based on his desire for an additional schedule award and impairment rating based on loss of use of his right finger.

On January 1, 1996 an Office medical adviser, Dr. Levine, reviewed appellant's medical records and stated that as a result of a work-related accident appellant sustained an amputation of the distal ring finger tip and fracture of the phalanx. He determined that appellant had a 75 degree flexion of the PIP joint, loss of grip strength and an amputation proximal to the distal joint. Dr. Levine stated that, according to the A.M.A., *Guides*, the amputation accounted for a 40 percent finger impairment pursuant to figure 17 on page 30, and an 18 percent loss of flexion pursuant to figure 21 on page 33 of the A.M.A., *Guides*. He concluded that overall, this accounted for a 6 percent hand impairment and a 5 percent upper extremity impairment. Dr. Levine found that the date of maximum medical improvement was October 2, 1995, the date of Dr. Cherry's amended impairment rating and report.

On February 1, 1996 the Office awarded appellant an additional 3 percent impairment for his finger, amounting to a 58 percent award under the schedule totaling 17.40 weeks from August 18 through December 17, 1994.

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

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.⁴

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,

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

such as an injury of a finger into the hand, of a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.⁵

In the present case, the Office did not consider whether appellant was entitled to an award based on the loss of use of the larger member, his right hand, despite the fact that Dr. Cherry had indicated in his October 2, 1995 medical report and disability rating sheet that appellant, following his June 7, 1995 amputation surgery, had a total disability to the right hand of eight percent.

In his January 1, 1996 report, the Office medical adviser does not consider Dr. Cherry's October 2, 1995 finding that appellant's impairment of his right second finger extended into his right hand. The Office medical adviser merely undertook a table conversion and determined that appellant had a 58 percent impairment of the right second finger, without addressing Dr. Cherry's conclusion that appellant's 58 percent impairment of the finger appellant, subsequent to the amputation surgery, equated to a 6 percent impairment to the right hand, plus an additional 2 percent for the loss of the overall power grip, resulting in an 8 percent impairment of the right hand.

Accordingly, the case must be remanded so that the Office may consider Dr. Cherry's October 2, 1995 report and disability rating sheet to determine whether the impairment in appellant's right finger resulting from his accepted May 17, 1994 employment injury extended into his right hand, resulting in an impairment of the right hand. After such further development of the medical evidence as the Office deems necessary, the Office shall issue a *de novo* decision.

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 1, 1996 is hereby set aside the case remanded for further action consistent with this decision.

Dated, Washington, D.C.
May 20, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski

⁵ *Tonya D. Bell*, 43 ECAB 845 (1992); *Ronald M. Klar*, 31 ECAB 136, 138 (1979); *Sam Jones*, 30 ECAB 163, 164 (1974).

Alternate Member