

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN H. LEMMERMAN and DEPARTMENT OF TRANSPORTATION,
COAST GUARD, Curtis Bay, Md.

*Docket No. 97-442; Submitted on the Record;
Issued February 10, 1999*

DECISION and ORDER

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

The issues are: (1) whether appellant has more than a 50 percent permanent impairment of his right hand for which he received a schedule award and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Board has duly reviewed the case on appeal and finds it is not in posture for decision.

In this case, appellant filed a claim on August 28, 1992 alleging that he injured his right hand in the performance of duty. The Office accepted appellant's claim for crush injury to little finger, amputation middle, ring and index fingers. Appellant completed a claim for compensation on December 13, 1994 and requested a schedule award. By decision dated February 8, 1994, the Office granted appellant a schedule award for a 50 percent permanent impairment of his right hand. Appellant, through his attorney, requested that the Office reopen his claim on February 2, 1995 as his condition had worsened. By decision dated April 13, 1995, the Office denied appellant's claim finding he had no more than a 50 percent impairment of his right hand. Appellant requested an oral hearing and by decision dated May 30, 1996 and finalized June 3, 1996, the hearing representative affirmed the Office's April 13, 1995 decision. Appellant requested reconsideration on June 27, 1996 and by decision dated October 3, 1996, the Office denied appellant's request for review of the merits as he failed to submit relevant new evidence.

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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

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 for all claimants the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁴

In this case, appellant's attending physician, Dr. Allan H. Macht, a Board-certified surgeon, submitted a report dated January 26, 1995 listing appellant's findings. He properly calculated appellant's degree of impairment due to amputations of his fingers. Appellant sustained 20 percent impairment of the index finger, 50 percent impairment of the middle finger and 60 percent impairment of the ring finger due to amputations.⁵ Dr. Macht also noted that appellant had 36 percent impairment of his index finger due to loss of range of motion at the distal interphalangeal joint.⁶ These impairment ratings equal 26 percent impairment of appellant's right hand.⁷ Dr. Macht then found that appellant had additional impairments to his hand due to loss of strength and pain.

The District medical director reviewed Dr. Macht's January 26, 1995 report and found that as he did not provide for sensory loss of the fingers, appellant was not entitled to impairment ratings for loss of strength or pain. However, at the oral hearing, appellant submitted additional evidence from Dr. Macht indicating that appellant's pain and loss of strength in his hand was due to impairments of the median nerve. The A.M.A., *Guides* specifically provide examples of injuries such as appellant's which resulted in amputations and indicated that in crush injury situations both loss of grip strength and pain due to nerve impairment can be considered.⁸

Therefore, on remand the Office should calculate appellant's impairment rating considering impairment to the median nerve and request additional information regarding appellant's loss of grip strength. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.⁹

³ A.M.A., *Guides* (4th ed. 1993).

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ A.M.A., *Guides*, 30, figure 17.

⁶ A.M.A., *Guides*, 32, figure 19.

⁷ A.M.A., *Guides*, 18, Table 1.

⁸ A.M.A., *Guides*, 66-67, examples 1 and 2.

⁹ Due to the disposition of this issue, it is not necessary for the Board to consider whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The decision of the Office of Workers' Compensation Programs dated June 3, 1996 is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
February 10, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member