U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDY WDOWIAK and U.S. POSTAL SERVICE,
POST OFFICE, Van Nuys, Calif.

Docket No. 97-1454; Submitted on the Record;
Issued January 26, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established that he has more than a 10 percent permanent impairment of the right middle finger, for which he has received a schedule award.

In the present case, the Office of Worker's Compensation Programs has accepted that appellant, a mailhandler, sustained a cyst of the right middle finger in the performance of his federal employment. Appellant underwent a surgical procedure for removal of a tumor mass of the right middle finger on August 9, 1994. The Office accepted that this surgical procedure was causally related to appellant's accepted employment injury.

On February 21, 1995 appellant's treating physician, Dr. Aleksandra Stobnicki, reported that appellant had small induration and keratosis of the palmar aspect of the distal interphalangel joint of the right third finger, with hypersensitivity to touch involving the entire fingertip distal to this lesion, worse on the median aspect of the fingertip with concomitant sensory loss of this area. Dr. Stobnicki concluded that she believed appellant had a selective sensory neuropathy of the distal palmar branch of the medial nerve.

On May 8, 1995 Dr. David R. Appert, a Board-certified orthopedic surgeon, reported that appellant had complaints of residual tenderness into the right long finger and recurrent swelling on the volar aspect of the finger since surgery. Dr. Appert also noted that appellant had all spontaneous motions with the right upper extremity, that appellant was able to spontaneously flex and shape the finger of the right hand, with intact flexor and sublinus tendon function and normal intrinsic function of the hand. Dr. Appert stated that appellant had a ganglion cyst volar aspect of the right long finger, status post excision; secondary neuropraxia of the digital nerve, possibly by entrapment of connective tissue.

In a report dated December 1, 1995, Dr. Mark S. Cohen, a Board-certified hand surgeon, acting as an Office referral physician, reported that appellant had complaints of continued discomfort along the volar scar, which was probably related to severance or scar of one of the

branches of the digital nerves. Dr. Cohen stated that he did not see evidence of recurrence of the tumor or any need for further surgical treatment. Dr. Cohen also noted that scar desensitization by a hand physical therapist was often helpful and that the majority of these problems resolved with time.

On October 23, 1996 Dr. Carlo Bellabarba, a Board-certified orthopedic surgeon, acting as an Office medical adviser, reviewed the case record. Dr. Bellabarba reported that appellant had undergone excision of the epidermal inclusion cyst in August 1994, since that time, he had continued to have subjective complaints of numbness in the finger, tenderness with hyperthesia at the distal aspect of the incision. Dr. Bellabarba noted that Dr. Cohen performed a medical evaluation on December 1, 1995 at which time he found no objective sensory deficits, no motor deficits or decreased range of motion, but did note significant tenderness on palpation of the distal scar, which he had attributed to entrapment of cutaneous nerves in the scar. Dr. Bellabarba concluded that appellant's impairment was entirely due to hypersensitivity of the right middle finger in the area of the surgical incision, which was palmar and ulnar in the digit. Dr. Bellabarba stated that according to Table 15, page 3/54 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A.) *Guides* (4th ed.), maximum permanent impairment which could be assigned for dysthesia or sensory deficit in the distribution of the ulnar digital nerve of the middle finger was 4 percent. According to Table 11, page 3/48, the deficit was grade 3 in that it interfered with daily activities. Dr. Bellabarba calculated that 50 percent of the maximum permanent impairment was therefore appropriate, for a 2 percent permanent impairment of the right upper extremity. Dr. Bellabarba concluded that appellant had a two percent permanent impairment of the right upper extremity and that the date of maximum medical improvement was three months postoperatively or November 9, 1994. On October 29, 1996 the Office requested that Dr. Bellabarba clarify his report. In an addendum dated November 25, 1996, Dr. Bellabarba stated that according to Table 2, page 3/19 of the A.M.A., *Guides*, 2 percent permanent impairment of the upper extremity was equivalent to a 2 percent permanent impairment of the hand. Applying this value to Table 1, page 3/18, Dr. Bellabarba concluded that 2 percent permanent impairment of the hand was equivalent to 10 percent permanent impairment of the right middle finger.

On December 12, 1996 the Office granted appellant a schedule award for 10 percent permanent loss of use of the right middle finger. The Office noted that the period of the award would be from November 9 to 29, 1994.

Section 8107 of the Federal Employees' Compensation Act[1] provides that, if there is a permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants in the evaluation of permanent physical impairment. The A.M.A., *Guides* has been adopted by the

[1] 5 U.S.C. § 8107.

Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.[2]

If appellant's physician does not use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the case record and to apply the A.M.A., *Guides* to the examination findings reported by the treating physician.[3] In the present case, the Office medical adviser, Dr. Bellabarba was the only physician of record who calculated appellant's impairment pursuant to the A.M.A., *Guides.* Dr. Bellabarba properly noted that Table 15 of the A.M.A., *Guides* provided a maximum permanent impairment value for dysthesia or sensory deficit of the ulnar digital nerve of the middle finger of 4 percent. Dr. Bellabarba then looked to Table 11 of the A.M.A., *Guides* to determine the grade of appellant's impairment. Dr. Bellabarba stated that appellant's deficit was grade 3 according to Table 11 because it interfered with daily activities. Table 11 provides that a grade 3 impairment is equivalent to 26 to 50 percent of the maximum allowable impairment. Dr. Bellabarba allowed for the highest gradient, which was 50 percent of the maximum allowable 4 percent impairment. He therefore calculated that appellant had a 2 percent permanent impairment of the upper right extremity. Dr. Bellabarba thereafter properly utilized Tables 2 and 1 of the A.M.A., *Guides* to determine that a 2 percent permanent impairment of the right upper extremity equaled a 10 percent permanent impairment of the right middle finger.

As Dr. Bellabarba properly utilized the medical evidence of record and the A.M.A., *Guides* to determine that appellant had a 10 percent permanent impairment of the right middle finger and as there is no other medical evidence of record that appellant had a greater impairment, the Office properly granted appellant a schedule award for a 10 percent permanent impairment of the right middle finger.

Finally, the Board notes that on appeal appellant has questioned the date of the commencement of the award. In the *Marie J. Born* decision, the Board reviewed the well-settled rule that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement and explained that maximum medical improvement "means that the physical condition of the injured member of the body has stabilized and will not improve further."[4]

[2] *James J. Hjort*, 45 ECAB 595 (1994).

[3] *Lena P. Huntley*, 46 ECAB 643 (1995).

[4] *Marie J. Born*, 27 ECAB 623 (1968).

The decision of the Office of Workers' Compensation Programs dated December 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 26, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member