

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARTHUR S. CASTILLO and DEPARTMENT OF THE ARMY,  
MISSILE RANGE, White Sands, NM

*Docket No. 98-930; Submitted on the Record;  
Issued October 21, 1999*

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DECISION and ORDER

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

The issue is whether appellant has more than eight percent permanent impairment of his right thumb for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than eight percent permanent impairment of his right thumb.

Appellant filed a claim alleging that on June 30, 1997 he sustained an injury in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for multiple contusions and right thumb sprain on August 14, 1997. The Office also approved surgical reconstruction of appellant's ulnar collateral ligament in his right thumb. Appellant requested a schedule award on September 30, 1997. The Office granted appellant a schedule award for eight percent permanent impairment of his right thumb on January 14, 1998.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> 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 for all claimants the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>3</sup> as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R § 10.304.

<sup>3</sup> A.M.A., *Guides* (4th ed. 1993).

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

Appellant's attending physician, Dr. Edwin Kennedy, a Board-certified orthopedic surgeon, completed a report on November 24, 1997. Dr. Kennedy found that appellant had normal strength and no sensory deficit in his right thumb. He provided range of motion figures for appellant's thumb in accordance with the A.M.A., *Guides*. Appellant's range of motion in his metacarpophalangeal joint was 42 degrees of flexion, a 2 percent impairment and 0 degrees of extension, which is not a ratable impairment under the A.M.A., *Guides*.<sup>5</sup> His range of motion of the interphalangeal joint was flexion 40 degrees, a 3 percent impairment and extension 30 degrees, a nonratable impairment under the A.M.A., *Guides*.<sup>6</sup> Appellant demonstrated thumb adduction of two centimeters which is a one percent impairment.<sup>7</sup> He was capable of abduction to 45 degrees, a 1 percent impairment under the A.M.A., *Guides*.<sup>8</sup> Appellant performed thumb opposition of seven centimeters, a one percent impairment.<sup>9</sup> Dr. Kennedy properly added the loss of range of motion figures for appellant's right thumb to reach an impairment rating of 8 percent. The district medical adviser reviewed Dr. Kennedy's report on January 2, 1998 and found that appellant reached maximum medical improvement on November 21, 1997. He concurred with Dr. Kennedy's impairment rating.

As Dr. Kennedy properly applied the A.M.A., *Guides* to his physical findings and as there is no medical evidence in the record establishing that appellant has more than eight percent permanent impairment to his right thumb, the Office properly granted appellant a schedule award for eight percent impairment.<sup>10</sup>

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<sup>5</sup> A.M.A., *Guides*, 27, Figure 13.

<sup>6</sup> A.M.A., *Guides*, 26, Figure 10.

<sup>7</sup> A.M.A., *Guides*, 28, Table 5.

<sup>8</sup> *Id.*, 28, Table 6.

<sup>9</sup> A.M.A., *Guides*, 29, Table 7.

<sup>10</sup> On appeal to the Board appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated January 14, 1998 is hereby affirmed.

Dated, Washington, D.C.  
October 21, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member