

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES A. NOCK and U.S. POSTAL SERVICE,  
BULK MAIL CENTER, Warrendale, PA

*Docket No. 99-143; Submitted on the Record;  
Issued July 6, 2000*

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DECISION and ORDER

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

The issue is whether appellant has established entitlement to a greater than 15 percent permanent impairment of his left hand for which he has received a schedule award.

The Board has duly reviewed the case record and finds that the case is not in posture for decision.

In the present case, the Office of Workers' Compensation Programs accepted appellant's left wrist sprain and aggravation of osteoarthritis of the left hand as a result of an October 29, 1996 work-related injury.<sup>1</sup> The Office also authorized carpometacarpal arthroplasty and metacarpal suspension-plasty which was performed on May 14, 1997. On July 1, 1998 appellant filed a claim for a schedule award. By decision dated August 5, 1998, the Office granted appellant a schedule award for a 15 percent permanent impairment of the left hand. The period of the award ran from January 13 to July 18, 1998, for a total of 36.60 weeks of compensation.

Under section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.304 of the implementing federal regulations,<sup>3</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 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*

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<sup>1</sup> Appellant is hearing impaired.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

*Impairment* (4<sup>th</sup> ed., 1993) have been adopted by the Office and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.<sup>4</sup>

The Office, on December 23, 1997, referred appellant for a second opinion evaluation to Dr. Robert M. Yanchus, Board-certified in orthopedic surgery, to determine the permanent impairment of appellant's left hand.

In a report dated January 13, 1998, Dr. Yanchus found that appellant had reached maximum medical improvement on that date.<sup>5</sup> He determined that appellant's left thumb had 0 to 155 degrees of retained flexion of the interphalangeal (IP) joint, 50 degrees of retained flexion of the metatarsophalangeal (MP) joint, 0 to 30 degrees of retained abduction of the thumb, opposition to 7 centimeters and adduction to 5 centimeters. Dr. Yanchus also noted appellant's history of left hand surgery performed on May 14, 1997.

On May 28, 1998 an Office medical adviser reviewed Dr. Yanchus' January 13, 1998 report. He found that, according to the A.M.A., *Guides*, 30 percent of retained abduction constituted a 6 percent impairment,<sup>6</sup> 7 centimeters of opposition constituted a 1 percent impairment,<sup>7</sup> 50 degrees retained flexion of the MP joint constituted a 1 percent impairment<sup>8</sup> and 155 degrees of retained flexion of the IP joint constituted a 0 percent impairment.<sup>9</sup> The Office medical adviser then noted that appellant's 8 percent thumb impairment was equal to 3 percent impairment of the hand.<sup>10</sup> He also noted that appellant's resection arthroplasty constituted a 12 percent impairment of the hand.<sup>11</sup> The Office medical adviser then combined the 3 percent and 12 percent impairments using the Combined Values Chart to reach a 15 percent impairment finding of the left hand.<sup>12</sup>

However, the Board finds that the Office medical adviser did not consider Dr. Yanchus' abduction evaluation of appellant's left thumb and thus his recommendation was based on incomplete data.<sup>13</sup> Because the Office medical adviser failed to include Dr. Yanchus' abduction

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<sup>4</sup> *James A. England*, 47 ECAB 115 (1995).

<sup>5</sup> However, Dr. Yanchus also noted that he would "anticipate a progressive improvement [in appellant's left hand] over the next year achieving a greater degree of function that he now has...."

<sup>6</sup> A.M.A., *Guides*, 28, Table 5.

<sup>7</sup> *Id.* at 29, Table 7.

<sup>8</sup> *Id.* at 27, Figure 13.

<sup>9</sup> *Id.* at 26, Figure 10.

<sup>10</sup> *Id.* at 18, Table 1.

<sup>11</sup> *Id.* at 61, Table 27.

<sup>12</sup> *Id.* at 322.

<sup>13</sup> Dr. Yanchus' found opposition to 7 centimeters which would have resulted in an additional 3 percent thumb impairment due to lack of radial abduction and thus would have changed the total impairment percentage of appellant's left hand. *Id.* at 28, Table 6.

finding, the case must be remanded to the Office for further recalculation. The Board also finds that the Office medical adviser noted that appellant had 30 percent impairment based on retained adduction, but failed to cite the proper table to support his finding.<sup>14</sup>

The decision of the Office of Workers' Compensation Programs dated August 5, 1998 is hereby set aside and remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
July 6, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>14</sup> Figure 14 of the A.M.A., *Guides*, 28, refers to impairment percentages based on loss of adduction.