

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY R. BUCHANAN and U.S. POSTAL SERVICE, MELROSE STATION,
Nashville, TN

*Docket No. 98-2363; Submitted on the Record;
Issued March 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to more than a three percent permanent impairment of the right hand, for which he has already received a schedule award.

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

On August 6, 1993 appellant, a 53-year-old letter carrier, filed a claim for an occupational disease (Form CA-2), assigned number A6-579225, alleging that he first realized that his condition of trigger finger of the long finger was caused or aggravated by his employment on July 16, 1993.¹

By decision dated December 22, 1993, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In an April 11, 1994 letter, appellant requested reconsideration of the Office's decision.

By decision dated October 27, 1994, the Office vacated its previous decision and accepted appellant's claim for right long trigger finger and right middle trigger finger.

On May 24, 1997 appellant filed a claim (Form CA-7) for a schedule award.

By letter dated July 17, 1997, the Office advised Dr. James K. Lanter, a Board-certified orthopedic surgeon and appellant's treating physician, to determine, *inter alia*, the extent of appellant's permanent impairment based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

A September 5, 1997 note to the file revealed that Dr. Lanter no longer had an office in Nashville, Tennessee and that appellant was authorized to see another orthopedic surgeon. The note further revealed that although his October 12, 1993 medical treatment note did not provide

¹ The record reveals that appellant retired from the employing establishment on March 25, 1995.

an impairment rating, it did discuss range of motion and that an Office medical adviser would review this report.

On September 5, 1997 an Office medical adviser reviewed Dr. Lanter's October 12, 1993 medical treatment note and determined that appellant did not have any permanent impairment.

The Office then advised Dr. David W. Gaw, a Board-certified orthopedic surgeon and appellant's treating physician to determine, *inter alia*, the extent of appellant's permanent impairment based on the fourth edition of the A.M.A., *Guides* by letter dated October 28, 1997. He submitted an October 31, 1997 medical report indicating that appellant had a three percent permanent impairment of the right upper extremity.²

On January 23, 1998 an Office medical adviser reviewed appellant's medical records and agreed with Dr. Gaw's finding.

On May 19, 1998 the Office granted appellant a schedule award for a three percent permanent impairment of the right hand for the period October 31 through December 12, 1997.

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation,⁴ 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 of loss of use.⁵ 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 A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

In his October 31, 1997 medical report, Dr. Gaw noted appellant's medical history, his findings on physical examination, a review of medical records and a diagnosis of postoperative surgery for traumatic tenosynovitis of the trigger fingers of the right third and fourth digits. Regarding the determination of an impairment rating for appellant's right hand, he opined:

² On October 31, 1997 appellant filed a claim for a recurrence (Form CA-2a) of disability of his July 1993 employment injury. In a January 23, 1998 letter, the Office advised appellant that it had received this Form CA-2a, as well as, another Form CA-2a and his Form CA-7. The Office then advised appellant that the above Form CA-2a was submitted for continued medical care. The record does not contain a decision regarding this recurrence claim. Therefore, the Board cannot address appellant's recurrence claim; *see* 20 C.F.R. § 501.2(c).

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

⁴ 20 C.F.R. § 10.304.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

“[B]ased upon the A.M.A., Guidelines, fourth edition, Page 65, Table 29, [appellant] retains a 10 percent permanent impairment to the right large finger and to the right ring finger. The 10 percent permanent impairment to the large finger equals 3 percent to the hand and the 10 percent permanent impairment to the ring finger equals 1 percent permanent impairment to the hand. This would combine to a 3 percent permanent impairment to the right upper extremity or a 2 percent permanent impairment to the whole person.”

Dr. Gaw diagnosed postoperative surgery for traumatic tenosynovitis of the right third and fourth fingers. In applying Table 29 of the fourth edition of the A.M.A., *Guides*, which actually appears on page 63 rather than page 65 and addresses impairment due to constrictive tenosynovitis, he determined that appellant had a 10 percent permanent impairment of both the right large finger and the right ring finger. The Board notes that this table indicates that the minimum impairment for a digit is 20 percent. Therefore, it appears that appellant may be entitled to a greater schedule award for permanent impairment of the right hand.

On remand, the Office should request that an Office medical adviser properly determine the extent of appellant’s right hand based on the tables in the fourth edition of the A.M.A., *Guides*. After such further development of the case as the Office deems necessary, it should issue an appropriate decision.

The May 19, 1998 decision of the Office of Workers’ Compensation Programs is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.
March 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member