

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BONA COOPER and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Corpus Christi, TX

*Docket No. 00-976; Submitted on the Record;
Issued February 7, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a three percent permanent impairment to her right thumb.

The Office of Workers' Compensation Programs accepted that appellant sustained a right hand contusion and aggravation of right thumb arthritis in the performance of duty on September 9, 1996. By decision dated March 31, 1997, the Office issued a schedule award for a three percent permanent impairment of the right thumb.

In a decision dated December 2, 1999, the Office determined that appellant was not entitled to an additional schedule award. By decision dated December 30, 1999, the Office denied modification.

The Board finds that the case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is 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.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

² A. George Lampo, 45 ECAB 441 (1994).

In this case, the attending physician, Dr. Christopher Miskovsky, an orthopedic surgeon, opined in a report dated October 15, 1999 that appellant had an 11 percent permanent impairment to the right arm. Dr. Miskovsky indicated that this was based on 10 percent for loss of grip strength, and 1 percent for loss of range of motion in the thumb. In a report dated December 1, 1999, an Office medical adviser opined that appellant had a two percent thumb impairment, with no ratable grip strength impairment.

Under the A.M.A., *Guides*, the formula for determining loss of grip strength is to subtract the abnormal strength in the injured arm from the normal strength, divide by the normal strength and calculate the percentage loss, then apply Table 34.³ The Office medical adviser stated in his report that the difference between his calculation (of no ratable impairment for loss of strength) and that of Dr. Miskovsky is that the A.M.A., *Guides* compare grip strength of the injured extremity to a standard grip strength, while Dr. Miskovsky compared the grip strength of the injured extremity to the uninjured extremity. The Board finds that this is not an accurate assessment of the case.

While there are instances, such as range of motion, when the A.M.A., *Guides* do not use comparisons between the injured extremity and the uninjured extremity,⁴ the A.M.A., *Guides* specifically provides that grip strength for the injured arm is “compared to those of the opposite extremity, which usually is normal.”⁵ The application of tables for average grip strength, listed in Table 31-33, is used “if both extremities are involved.”⁶ Therefore, the “normal strength” used in the basic formula appears to be that of the opposite arm, unless both extremities are injured.

In this case, the Office medical adviser applied the formula using a “normal strength” derived from Table 32, the average grip strength based on age, rather than the grip strength of the opposite arm.⁷ Since only one arm was involved, the A.M.A., *Guides* direct the examiner to use the opposite extremity grip strength in applying the loss of strength formula.⁸

The case will be remanded to the Office for a supplemental report from an Office medical adviser for an opinion as to the degree of permanent impairment based on thumb range of motion and the specific provisions of the A.M.A., *Guides* as to calculating loss of grip strength. After such further development as the Office deems necessary, it should issue an appropriate decision.

³ A.M.A., *Guides* at 64, 65 (4th ed. 1993). Table 34 provides, for example, a 10 percent permanent impairment for strength loss of 10 to 30 percent.

⁴ See *Frank Vara, Jr.*, 38 ECAB 434 (1987).

⁵ A.M.A., *Guides* at 64.

⁶ *Id.*

⁷ *Id.* at 65, Table 32. The Board notes that Dr. Miskovsky also failed to use the opposite arm strength, but apparently based his calculations on Table 31, the average grip strength based on occupation.

⁸ See *Kenneth J. Price*, (Docket No. 97-1727, issued May 14, 1999); *Michael L. Gallegos*, (Docket No. 96-1050, issued June 22, 1998) (in both of these cases the Board determined that the Office medical adviser had improperly used Table 32, rather than the uninjured extremity).

The decisions of the Office of Workers' Compensation Programs dated December 30 and December 2, 1999, are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
February 7, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Valerie D. Evans-Harrell
Alternate Member