

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DENNIS F. ERICKSON and DEPARTMENT OF THE NAVY,  
CHIEF OF NAVAL EDUCATION & TRAINING,  
Pensacola, FL

*Docket No. 00-1101; Submitted on the Record;  
Issued February 12, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he has a permanent impairment which entitles him to a schedule award.

The Board finds that appellant has a three percent permanent impairment of his left index finger which entitles him to a schedule award.

On December 28, 1998 appellant, then a 42-year-old maintenance mechanic, sustained lacerations of his left thumb, index finger and ring finger, including a laceration of the extensor tendon of his left index finger. The Office of Workers' Compensation Programs authorized a surgical repair of the extensor tendon of appellant's left index finger. He applied for a schedule award and, by decision dated October 21, 1999, the Office denied appellant's claim on the grounds that the medical evidence did not show he had permanent impairment of his left hand or upper extremity which entitles him to a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,<sup>2</sup> including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.<sup>3</sup>

Section 8107 of the 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

for the permanent impairment of the scheduled member or function.<sup>4</sup> 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* (4<sup>th</sup> ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

In a report dated August 30, 1999, Dr. Robert C. Dugan, an attending Board-certified orthopedic surgeon, indicated that appellant had a 10- to 15-degree extensor lag at the distal interphalangeal (DIP) joint of the left index finger. Dr. Dugan noted that, due to his extensor tendon loss, appellant had a five percent impairment of his left index finger. He noted that, on a subjective basis, appellant complained of discomfort only with changes in the weather.

In a report dated October 17, 1999, the Office district medical adviser noted that appellant had normal flexion of the DIP joint of his left index finger, but had active extension of the DIP joint of his left index finger to only 10 degrees. He indicated that this limited range of motion equaled a 2 percent impairment of appellant's left index finger. The Office district medical adviser indicated that this 2 percent impairment equaled a 0 percent impairment of appellant's left hand and arm.<sup>67</sup>

The Board finds that the medical evidence shows that appellant has a three percent permanent impairment of his left index finger. The record reveals that, under the protocols standards of the A.M.A., *Guides*, the extensor lag of up to 15 degrees of the DIP joint of appellant's left index finger equals a 3 percent impairment of appellant's left index finger.<sup>8</sup> The Office district medical adviser indicated that appellant had zero impairment of his left hand and arm and, based on this opinion, the Office determined that appellant was not entitled to a schedule award. However, the medical evidence does not show that appellant's left index finger impairment extended into his left hand or arm and, therefore, it was not appropriate to base his entitlement to schedule award compensation on calculations relating to his hand or arm.<sup>9</sup> The Act provides that a complete loss of the index finger entitles a claimant to 46 weeks of

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<sup>4</sup> 5 U.S.C. § 8107(a).

<sup>5</sup> *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

<sup>6</sup> See A.M.A., *Guides* 18-19, Tables 1-2.

<sup>7</sup> Where the residuals of an injury to a member of the body specified in the schedule award provisions of the Act extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member. See *Tonya D. Bell*, 43 ECAB 845, 848-49 (1992).

<sup>8</sup> See A.M.A., *Guides* 32, Figure 19.

<sup>9</sup> The record does not reveal that appellant had any impairment other than that based on his limited left index finger extension.

compensation and therefore the 3 percent impairment of appellant's left index finger would entitle him to 1.38 weeks of compensation.<sup>10</sup>

The decision of the Office of Workers' Compensation Programs dated October 21, 1999 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
February 12, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> See 5 U.S.C. § 8107(b)(7). Dr. Dugan indicated that appellant had a five percent impairment of his left index finger, but he did not explain how his opinion comported with the standards of the A.M.A., *Guides*; see *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).