

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACKIE LEE McDONALD and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

*Docket No. 00-2411; Submitted on the Record;
Issued June 12, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 19 percent permanent impairment of his left upper extremity for which he received a schedule award.

Appellant, a 46-year-old mailhandler, filed a notice of traumatic injury on September 7, 1998 alleging that on that date he sustained a partial amputation of his left thumb in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for partial amputation and resulting surgery on October 1, 1998.¹

Appellant requested a schedule award in February 1999. By decision dated January 13, 2000, the Office granted appellant a schedule award for a 19 percent permanent impairment of his left upper extremity. Appellant requested a review of the written record on January 25, 2000 and by decision dated June 27, 2000 and finalized July 3, 2000, the hearing representative affirmed the Office's January 13, 2000 decision.

The Board finds that appellant has no more than a 19 percent permanent impairment of his left upper extremity.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ 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

¹ Appellant filed additional notices of occupational disease on March 29, 1999. The Office accepted these claims for right lateral epicondylitis and left carpal tunnel syndrome on April 5, 1999. The Office did not consider any permanent impairment from these conditions in evaluating appellant's permanent impairment of his left upper extremity.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

results and to ensure equal justice for all claimants the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁵

In this case, appellant's attending physician, Dr. Ghazi M. Rayan, a Board-certified orthopedic surgeon, found that appellant had a seven percent impairment of the left hand due to his accepted employment injury. He noted that appellant had satisfactory range of motion in his thumb, that he had some ill-defined tenderness and that he had 65 pounds of grip strength on the left compared to 145 on the right.

The Office requested an additional report from Dr. Rayan. On March 22, 1999 he stated that appellant reached maximum medical improvement on January 25, 1999, that he had 60 degrees of motion in the interphalangeal joint of his thumb, 65 pounds of grip strength on the left and 145 pounds on the right and that he had subjective residual complaints of discomfort and cold sensitivity.

The Office referred appellant for a second opinion evaluation with Dr. Brent D. Tipton, Board-certified in physical medicine and rehabilitation. In a report dated November 1, 1999, Dr. Tipton noted appellant's history of injury and his medical history. He stated that appellant was left hand dominant and provided his results on physical examination. Dr. Tipton stated that appellant had interphalangeal flexion of 40 degrees and extension of 10 degrees. He stated that appellant's metacarpophalangeal joint had 60 degrees of flexion and 45 degrees of extension. Dr. Tipton found normal adduction, abduction and apposition. He noted that appellant's grip strength on the right was 65, 64, and 56 pounds and on the left was 43, 44, and 46 pounds. Dr. Tipton stated that appellant's thumb tip was 2.5 centimeters and very sensitive.

He found that appellant had 3 percent impairment of his upper extremity due to loss of range of motion and 10 percent impairment due to loss of strength for 13 percent impairment of the left upper extremity.

The district medical adviser reviewed the medical evidence on January 3, 2000 and found that amputation of less than one-half of the distal phalanx with no loss of bone was 13 percent impairment of the thumb and 5 percent of the upper extremity.⁶ He noted that interphalangeal flexion of 40 degrees is 3 percent impairment of the thumb and 1 percent of the upper extremity.⁷ The district medical adviser found that appellant had 10 percent impairment of the upper extremity due to motor deficit.⁸ He found that appellant had a sensory abnormality of 10 percent of the thumb and 4 percent of the upper extremity.⁹

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides*, 24, Figure 7; 18, Table 1; 19, Table 2.

⁷ A.M.A., *Guides*, 25, Figure 10, 18, Table 1; 19, Table 2.

⁸ A.M.A., *Guides*, 65, Tables 32, 34.

⁹ A.M.A., *Guides*, 24, Figure 7; 18 Table1; 19, Table 2.

The district medical adviser did not consider any impairment due to disfigurement because the Act provides that only if an injury causes serious disfigurement of the face, head or neck of a character likely to handicap a claimant in securing or maintaining employment as a schedule award is payable.¹⁰ There is no evidence that appellant sustained a disfigurement of his face, head or neck in this case.

The Board finds that there is no evidence that appellant has more than a 19 percent permanent impairment of his left upper extremity and that, therefore, the Office properly granted him a schedule award in this amount.

The July 3 and January 13, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 12, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁰ 5 U.S.C. § 8107(c)(21).