

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THEODORE W. FOULK and DEPARTMENT OF THE AIR FORCE,
McGUIRE AIR FORCE BASE, Browns Mills, NJ

*Docket No. 00-1737; Submitted on the Record;
Issued May 4, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a six percent permanent impairment of his right hand, for which he received a schedule award.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the January 18, 2000 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

On appeal appellant's representative argues that appellant's treating physician, Dr. David Weiss, an osteopath, provided detailed medical evidence conforming with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, which established that appellant had a 45 percent permanent impairment of his right hand due to his right index finger laceration and tendon repair. However, according to the A.M.A., *Guides*, a total traumatic amputation of an index finger at the metacarpophalangeal (MCP) joint, which is a 100 percent impairment of the index finger, equates with only a 20 percent permanent impairment of the hand.¹ Thus, the maximum impairment to a hand from the total loss of an index finger is only a 20 percent impairment. Therefore, it is impossible for appellant to have a 45 percent impairment of his right hand due to his right index finger laceration and corrective surgery, as Dr. Weiss opined. Consequently, this argument is without merit.

Appellant's representative also argues that Dr. Allen R. Berkowitz, a Board-certified orthopedic surgeon who was selected as an impartial medical examiner with the participation of appellant and his representative, does not carry the weight of the medical opinion evidence because he failed to discuss whether appellant should be rated for ankylosis or an amputation of

¹ A.M.A., *Guides*, Table 1, Figure 3, p 3/18.

the right index finger. Further, Dr. Berkowitz confirmed that appellant had a mild supination deformity at the level of the distal interphalangeal (DIP) joint and had post-traumatic arthritis.

The record reveals that appellant did not sustain any right index finger amputation. Therefore, no rating for an amputation can be made.

Dr. Berkowitz did rate appellant for ankylosis of the right index finger, indicating that he found a 4 percent impairment at the DIP for loss of extension and a 15 percent impairment for loss of flexion,² for a combined impairment at the DIP joint of 19 percent. He found a 5 percent impairment for loss of extension at the MCP joint and a 6 percent impairment for loss of flexion for a combined impairment of 11 percent. Combining these impairments, Dr. Berkowitz properly applied the A.M.A., *Guides* and determined that appellant had a 28 percent impairment of the right index finger due to ankylosis, which equates with a 6 percent impairment of the hand according to Table 1, p. 3/18. Consequently, these arguments are also without merit.

Lastly, appellant's representative notes that Dr. Berkowitz determined appellant's impairment both in terms of the hand (6 percent) and of the right upper extremity (5 percent) in accordance with Table 2, p. 3/19. He argues that appellant should therefore receive a schedule award for the entire upper extremity and not just the hand.

The Board has held that where the residuals of an injury to a member of the body specified in the schedule³ extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, or a hand into an arm or a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.⁴

In this case, appellant's index finger extends into his hand, which would make an award for impairment to the hand appropriate. However, there is no evidence in the record that appellant's finger injury extends into his arm or upper extremity. Therefore, an award for upper extremity impairment would not be appropriate.

The Board notes that appellant was granted 14.64 weeks of compensation and had already received a schedule award for a 8.74 weeks of compensation, leaving a balance due of 5.90 weeks. The schedule award order states that only 5.30 weeks of compensation are due. However, the Board finds that this is harmless error because appellant received additional compensation from January 15 to February 25, 1997 for a total of 5 weeks and 6 days or approximately 5.9 weeks.

² According to the A.M.A., *Guides*, Figure 1, p. 3/16 losses in degrees of flexion plus losses in degrees of extension equal the number of degrees of ankylosis of the joint.

³ 5 U.S.C. § 8107.

⁴ *Asline Johnson*, 42 ECAB 619 (1991).

The January 18, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 4, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member