

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVA R. LEPPER and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Omaha, NE

*Docket No. 00-1981; Submitted on the Record;
Issued May 11, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 26 percent permanent loss of use of her left thumb.

On September 9, 1988 appellant, then a 35-year-old voucher examiner, filed a claim for a smashed left thumb sustained on that date while moving folders into a file cabinet. She underwent numerous surgeries on her left thumb, including excision of the thumbnail and avulsion of the nail matrix. The Office of Workers' Compensation Programs accepted that appellant sustained a contusion of the left thumb and excision of the left thumb nail.

On June 29, 1999 appellant filed a claim for a schedule award. On March 15, 1999 the Office referred her, the case record and a statement of accepted facts to Dr. Kip Burkman, a Board-certified physiatrist, for an evaluation of the permanent impairment of her left thumb. Based upon Dr. Burkman's April 12, 1999 report, as reviewed by an Office medical adviser on May 11, 1999, the Office issued appellant a schedule award on August 12, 1999 for a 26 percent permanent loss of use of the left thumb. By decision dated September 15, 1999, the Office determined that this schedule award should be paid at the three-quarters rate for beneficiaries with dependents.

By letter dated December 30, 1999, appellant requested reconsideration and submitted photographs of her thumbs. By decision dated April 3, 2000, the Office found that the additional evidence did not warrant modification of its prior decision.

The Board finds that appellant has no more than a 26 percent permanent loss of use of her left thumb.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

In his April 12, 1999 report, Dr. Burkman assigned 1 percent impairment of the thumb for 47 degrees of metacarpophalangeal joint flexion and 0 percent for extension of this joint to 0 degrees and 4 percent for 26 degrees of interphalangeal flexion and 0 percent for extension of 11 degrees of this joint. He assigned 13 percent impairment for opposition to 3 centimeters and 0 percent for adduction to 8 centimeters. Dr. Burkman also assigned 10 percent impairment of the thumb for pain and decreased sensation of the thumb, computed by multiplying 20 percent from the table for grading due to pain or loss of sensation by the 50 percent maximum impairment of the digit for the median nerve branches to the radial and ulnar sides of the thumb. Using the Combined Values Chart, he concluded that these impairments constituted a 26 percent impairment of the left thumb. An Office medical adviser reviewed Dr. Burkman's report on May 11, 1999 and stated that the rating was correct based on the A.M.A., *Guides*.

The Board finds that Dr. Burkman's findings show a 26 percent permanent loss of use of the left thumb, according to the relevant tables of the A.M.A., *Guides*. There is no evidence that appellant has a greater loss of use of the left thumb. Appellant's attending physician, Dr. Robert M. Cochran, a Board-certified orthopedic surgeon, concluded in a January 13, 1998 report that appellant had a 14 percent permanent loss of use of the left thumb. Disfigurement is payable under section 8107 of the Act only if it is of the face, head or neck.

On appeal, appellant complains that she had to use sick leave during the time she missed from work for the numerous surgeries to her left thumb. By letter dated October 19, 1999, the Office sent appellant claim forms to buy back leave she used in connection with her September 9, 1989 employment injury, but the case record does not indicate that appellant filed claims for any period of leave used for the surgeries. In any event, the only issue decided by the Office was the amount of the schedule award, which was correct.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

The April 3, 2000 and September 15, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
May 11, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member