

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH F. O'NEILL and U.S. POSTAL SERVICE,  
POST OFFICE, East Hartford, CT

*Docket No. 02-535; Submitted on the Record;  
Issued August 21, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has more than a five percent permanent impairment of the left index finger.

On November 6, 1998 appellant, then a 52-year-old letter carrier, sustained an injury to his left index finger when a mail truck door closed on his hand. The Office of Workers' Compensation Programs accepted the claim for a fracture of left index finger with extensor avulsion. Appellant did not stop work.

On October 21, 1999 appellant filed a claim for a schedule award.

In support of his claim for a schedule award, appellant submitted an operative note dated November 6, 1998 and a disability note dated November 6, 1998. The operative report prepared by Dr. Robert S. Wetmore, a Board-certified orthopedist, noted that appellant underwent an irrigation and debridement of the left index finger wound. Dr. Wetmore diagnosed appellant with an open fracture of the left index finger with extensor tendon avulsion. The disability slip noted that appellant could return to work under restrictions.

Thereafter, appellant submitted treatment notes from Dr. Wetmore dated November 9, 1998 to May 6, 1999 and physical therapy notes. Dr. Wetmore noted that appellant's progress post surgery indicated that appellant's wound healed completely. Dr. Wetmore recommended occupational therapy. His note dated May 6, 1999, indicated that findings upon physical examination reversed 15 degrees loss of extension; flexion of 60 degrees at the distal interphalangeal (DIP) joint; the proximal interphalangeal (PIP) joint demonstrated 95 degrees flexion and full extension; there was normal metacarpophalangeal (MCP) motion; with numbness along the dorsal skin between the base of the nail plate and scar. Dr. Wetmore indicated that appellant reached maximum medical improvement.

In a letter dated December 29, 1999, the Office referred appellant to Dr. Wetmore for an evaluation of permanent impairment determined in accordance with the American Medical

Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (4<sup>th</sup> ed. 1993).

In a report dated January 25, 2000, Dr. Wetmore indicated that appellant's subjective complaints on May 6, 1999 included tenderness over the dorsum of the DIP joint to the index finger; persistent dorsal numbness over the joint; and occasional clicking sensation in the joint. He noted that examination of the range of motion revealed normal metacarpophalangeal joint motion; full extension of the PIP joint with flexion of 95 degrees (which was comparable to the right index finger); 15 degrees loss of extension of the DIP joint; flexion of the DIP joint to 60 degrees; and numbness along the dorsal skin of the finger between the base of the nail plate and the scar. Dr. Wetmore noted that according to the A.M.A., *Guides* (4<sup>th</sup> ed. 1993) appellant sustained an 8 percent loss due to diminished motion at the DIP joint with no measurable loss at the PIP joint or the MCP joint; and a 2 percent sensory loss to the dorsum of the median nerve; for a combined loss of 10 percent permanent impairment of the left index finger.

Dr. Wetmore's report and the case record were referred to the Office's medical adviser who determined in accordance with the A.M.A., *Guides* (4<sup>th</sup> ed. 1993) that appellant sustained a five percent impairment of the left index finger. The medical adviser noted that Dr. Wetmore indicated a 15 percent loss of extension of the DIP; 60 degrees of flexion of the DIP; and numbness of the dorsum of finger between the base of nail plate and DIP joint. The medical adviser indicated that the range of motion figures of 60 degrees flexion for the DIP joint provided a 5 percent impairment due to the decreased flexion;<sup>1</sup> the 15 percent loss of extension figure did not correlate with an impairment rating in the A.M.A., *Guides*;<sup>2</sup> and the findings with regard to sensory loss between the base of the nail plate and DIP joint also did not correlate to the A.M.A., *Guides* as he did not utilize the two-point discrimination test.<sup>3</sup>

In a decision dated August 21, 2001, the Office granted appellant a schedule award for a five percent permanent impairment of the left index finger.

The Board finds that appellant has no more than a five percent impairment of the left index finger.

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulation<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled 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,

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<sup>1</sup> See page 32, Figure 19 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 461, Figure 16-21 (4<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>2</sup> *Id.*

<sup>3</sup> See page 30 to 31, Tables 8, 9 (5<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 446-47, Figure 16-5 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

On appeal appellant alleges that he is entitled to a schedule award greater than five percent.

The Board has carefully reviewed Dr. Wetmore's report dated January 25, 2000, which determined appellant's left index finger impairment and notes that Dr. Wetmore did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.<sup>6</sup> Dr. Wetmore did not provide a numerical impairment rating in conformance with the A.M.A., *Guides*. He noted that appellant sustained a 15 degree loss of extension of the DIP joint, however, failed to provide a figure in conformance with the A.M.A., *Guides*; and Dr. Wetmore noted numbness along the dorsal skin of the finger between the base of the nail plate and the scar, yet did not perform the two point discrimination test set forth in the A.M.A., *Guides* which is utilized to determine sensory loss.<sup>7</sup> Additionally, the physician did not cite to tables or charts for an impairment rating determination. The Board finds that Dr. Wetmore did not properly follow the procedures as set forth in the A.M.A., *Guides*.<sup>8</sup>

The medical adviser who reviewed Dr. Wetmore's report correlated findings from Dr. Wetmore's reports to specific provisions in the A.M.A., *Guides*. The medical adviser specifically noted: (1) the findings in Dr. Wetmore's January 25, 2000 report, of 15 degrees loss of extension of the DIP joint, did not correlate with the A.M.A., *Guides*; (2) the findings did not provide Dr. Wetmore's actual extension figure from which he determined a loss of extension,<sup>9</sup> and (3) the rating for numbness along the dorsal skin of the finger between the base of the nail plate and the scar again was not ratable as Dr. Wetmore did not utilize the two-point discrimination test as set forth in the A.M.A., *Guides*.<sup>10</sup> Dr. Wetmore's figures generated only a 5 percent permanent impairment of the left index finger due to flexion of 60 degrees.

The Board notes that Dr. Wetmore and the medical adviser calculated appellant's schedule award based on the fourth edition of the A.M.A., *Guides*. The fifth edition of the A.M.A., *Guides*<sup>11</sup> became effective February 1, 2001 and thereafter, the Office issued its

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<sup>6</sup> See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

<sup>7</sup> See *supra* note 3.

<sup>8</sup> See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

<sup>9</sup> See page 32, Figure 19 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 461, Figure 16-21 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>10</sup> See page 30 to 31, Tables 8 to 9 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 446 to 447, Figure 16-5 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>11</sup> See FECA Bulletin 01-05 (issued January 31, 2001).

August 21, 2001 decision. Upon review of both the fourth and fifth editions of the A.M.A., *Guides* the Board notes that there is no difference in the impairment rating in appellant's case.

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Wetmore's January 25, 2000 report and reached an impairment rating of five percent. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant, is entitled to a schedule award for no more than five percent impairment of the left index finger.

The August 21, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
August 21, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member