

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA J. PENNEY-GUZMAN and DEPARTMENT OF HEALTH
& HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION,
San Bernardino, CA

*Docket No. 03-221; Submitted on the Record;
Issued April 10, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 17 percent permanent impairment of the right upper extremity as a result of her accepted employment injury, for which she has received schedule awards.

On June 1, 1998 appellant, then a 44-year-old legal assistant, filed a claim asserting that the torn ligament in her right thumb was a result of her federal employment. The Office of Workers' Compensation Programs accepted her claim for aggravation of osteoarthritis in the metacarpophalangeal joint of the right thumb and authorized an arthrodesis of the right thumb with bone graft. Appellant received benefits.

On September 14, 1999 appellant filed a claim for a schedule award. Her attending orthopedic surgeon, Dr. Charles S. Lane, reported on September 10, 1999 that appellant's status was permanent and stationary with normal grasp and no motion at the metacarpophalangeal joint of her right thumb and intermittent slight pain with sustained firm pinch to the thumb.

On November 1, 1999 Dr. Arthur S. Harris, an Office consultant, reviewed Dr. Lane's clinical findings of June 2, 1999 and determined that appellant had a nine percent impairment of the right thumb, or the equivalent of a four percent impairment of the right upper extremity.

On November 23, 1999 the Office issued a schedule award for a four-percent permanent impairment of the right upper extremity.

In a decision dated July 17, 2000, an Office hearing representative affirmed the award.

Appellant requested reconsideration and submitted Dr. Lane's October 16, 2000 clinical findings.

On February 21, 2001 the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office noted that Dr. Lane's findings, which included no ranges of motion, supported only a two-percent impairment of the right upper extremity.

Appellant again requested reconsideration. She requested authorization for Dr. Lane to complete an upper extremity impairment evaluation record for a complete and accurate evaluation of her thumb.

In a decision dated August 31, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support thereof was immaterial and insufficient to warrant a review of the prior decision.

On September 24, 2001 appellant requested reconsideration. In support thereof she submitted a September 6, 2001 report from Dr. Stuart H. Kushner, an orthopedic surgeon and associate of Dr. Lane. Dr. Kushner noted excellent range of motion of both wrists and all digits of both hands with the exception of the right thumb, which had no motion at the metacarpophalangeal joint following arthrodesis.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Bunsri T. Sophon, an orthopedic surgeon, for an evaluation of permanent impairment due to her accepted work injury.

On November 9, 2001 Dr. Sophon reported his clinical findings. He noted that appellant had uncomfortable localized finger pain that interfered with daily activities such as buttoning clothes and writing. Range of motion findings for the right thumb included 40 degrees lack of flexion for the interphalangeal joint, ankylosis at 30 degrees flexion for the metacarpophalangeal joint, 50 degrees radial abduction, 4 centimeters lack of adduction and 4 centimeters lack of opposition.

Dr. Sophon indicated that finger pathology did not affect grip strength, yet he reported that grip strength values on the affected side versus the opposite by dynamometer readings were 45/65. And in his narrative report on November 14, 2001 he reported that grip with Jamar Dynamometer was 40/40/45 on the right and 55/60/55 on the left. He further reported that appellant had 37 percent weakness of the right major handgrip.

On November 26, 2001 an Office medical consultant reviewed Dr. Sophon's findings and determined that appellant had a 17 percent total impairment of the right upper extremity. The consultant reported a grip strength loss index of 27 percent.

On November 29, 2001 the Office issued a schedule award for an additional 13 percent permanent impairment of the right upper extremity.

On March 28, 2002 appellant requested reconsideration. She explained that she was having increased problems in her right elbow and shoulder. She submitted a February 26, 2002 report from Dr. Kushner, who again reported no range of motion at the metacarpophalangeal joint of the right thumb. He diagnosed right lateral epicondylitis (tennis elbow) and tendinitis of the right shoulder, which he attributed to the repetitive demands of appellant's occupation.

In a decision dated May 2, 2002, the Office denied appellant's request on the grounds that the evidence submitted was immaterial and repetitious and was insufficient to warrant a review of the prior decision.

Appellant appeals the Office's November 29, 2001 schedule award. She states that she has been having increasing problems with her right arm, for which she filed a new claim and new treatment records.¹

The Board finds that this case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

After the Office's February 1, 2001 decision, appellant requested authorization for a complete and accurate evaluation of the impairment of her thumb. The Office eventually referred appellant to Dr. Sophon, an orthopedic surgeon, for this purpose. He reported clinical findings on November 9, 2001. According to Figure 16-12, page 456, of the A.M.A., *Guides*, 40 degrees loss of flexion at the interphalangeal joint represents a 3 percent impairment of the thumb. According to Figure 16-15, page 457, metacarpophalangeal ankylosis at 30 degrees flexion represents a 6 percent impairment of the thumb. Table 16-8a, page 459, indicates that 50 degrees of radial abduction represents no impairment. Table 16-8b, page 459, indicates that 4 centimeters of adduction represents a 4 percent impairment of the thumb. And according to Table 16-9, page 460, 4 centimeters of opposition represents a 9 percent impairment of the thumb.

Impairments due to loss of flexion and extension at the interphalangeal and metacarpophalangeal joints, radial abduction, adduction and opposition are added to determine the total thumb impairment due to abnormal motion.⁴ Appellant, therefore, has a 22 percent impairment of her right thumb due to abnormal motion, which translates to a 9 percent impairment of the right hand⁵ or, if applicable, an 8 percent impairment of the upper extremity.⁶

¹ The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision of November 29, 2001. 20 C.F.R. § 501.2(c). The Board, therefore, has no authority to review the medical evidence that appellant submitted on appeal.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ A.M.A., *Guides* 460 (5th ed. 2001) (adding two or more abnormal thumb motions).

⁵ *Id.* at 438 (Table 16-1).

⁶ *Id.* at 439 (Table 16-2).

The strength loss index is the percentage loss of strength of the affected side versus the opposite or normal side.⁷ Table 16-34, page 509, of the A.M.A., *Guides* translates this percentage into an upper extremity impairment.⁸ A problem arises in this case when attempting to determine impairment due to loss of grip strength. Dr. Sophon reported varying grip strength values and depending on which values are chosen, appellant's strength loss index can range from 18 to 31 percent and the impairment of her upper extremity is either 10 or 20 percent under Table 16-34, page 509. To confuse matters more, Dr. Sophon reported a 37 percent weakness of the right major handgrip, which finds no support in the measurements reported. The Office medical consultant used a 27 percent loss of strength index, which is supported by Jamar Dynamometer readings of 40/55,⁹ but he did not explain the reason he chose these measurements over the others reported.

The Board cannot determine impairment due to loss of grip strength from the various grip strength values reported by the Office referral physician. For this reason, the Board will set aside the Office's November 29, 2001 decision and remand the case to clarify whether residuals of appellant's right thumb injury extend into her hand or into her arm and if so, to clarify her grip strength loss index. After such further development of the medical evidence as may be necessary, the Office shall issue an appropriate schedule award for permanent impairment resulting from her accepted employment injury.¹⁰

⁷ *Id.* at 509.

⁸ Where the residuals of an injury to a member of the body specified in the schedule 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. *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983). If residuals of appellant's accepted thumb injury extend into the hand and into the arm, then the Office should base her schedule award on impairment of the larger member.

⁹ $(55 - 40) / 55 = 27$ percent

¹⁰ The Office has not accepted that appellant's right elbow or shoulder conditions are employment related.

The November 29, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
April 10, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member