

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE M. NEWCOMB and U.S. POSTAL SERVICE,
BAYMEADOWS DELIVERY CENTER, Jacksonville, FL

*Docket No. 03-233; Submitted on the Record;
Issued May 9, 2003*

DECISION and ORDER

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

The issue is whether appellant has more than a nine percent permanent impairment of her right little finger for which she received a schedule award.

Appellant, a 52-year-old rural carrier, filed a notice of traumatic injury on April 1, 2002 alleging that on that date she slammed a car door on her right hand injuring her fourth finger. The Office of Workers' Compensation Programs accepted appellant's claim for fracture of the right phalange.

Appellant requested a schedule award on July 27, 2002. The Office granted a schedule award on October 18, 2002 finding that appellant had a nine percent permanent impairment of the middle finger of her right hand entitling her to 2.7 weeks of compensation.

The Board finds that appellant has a 14 percent permanent impairment of her right fourth finger and is entitled to no more than 2.7 weeks of compensation.

The schedule award provisions 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 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, 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 implementing regulation as the appropriate standard for evaluating schedule losses.

¹ 5 U.S.C. §§ 8101-8193, § 8107.

² 20 C.F.R. § 10.404 (1999).

Appellant's attending physician, Dr. Garry S. Kitay, an orthopedic surgeon, diagnosed a nondisplaced fracture of the middle phalanx of the right fourth finger with lacerations and completed a report on June 13, 2002 indicating that appellant had reached maximum medical improvement. He stated that appellant had mild flexion deformity but full flexion of her right fourth finger. Dr. Kitay listed appellant's impairment as 0 to 95 degrees of motion of the metacarpophalangeal (MP) joint, 10 to 100 degrees of motion of the proximal interphalangeal (PIP) joint and 5 to 60 degrees of motion of the distal interphalangeal (DIP) joint. He concluded that appellant had a one percent impairment of the whole person based on stiffness.

The district medical adviser reviewed Dr. Kitay's report and applied the A.M.A., *Guides*. He noted that appellant had a 3 percent impairment of the PIP joint³ due to 10 degrees loss of extension and 6 percent impairment of the DIP due to flexion of 60 degrees, a 5 percent impairment and loss of extension of a negative five degrees, a 1 percent impairment.⁴ The district medical adviser found that appellant had no impairment of the MP joint, however, the Board notes that zero degrees of extension is a five percent impairment of that joint.⁵

The A.M.A., *Guides* provide that abnormal motion impairments at more than one finger joint should be combined to reach the total impairment rating for the finger.⁶ Appellant has impairment ratings of 3, 5, 1 and 5 for a total impairment to her right small finger of 14 percent. In accordance with the Act, appellant would receive 15 weeks of compensation for total loss of her fourth finger,⁷ 14 percent of 15 weeks is 2.1 weeks of compensation. Therefore the Board finds that appellant is entitled to no more than 2.7 weeks of compensation for permanent impairment of her right fourth finger.⁸

³ A.M.A., *Guides*, 463, Figure 16-23.

⁴ *Id.* at 461, Figure 16-21.

⁵ *Id.* at 464, Figure 16-25.

⁶ *Id.* at 465.

⁷ 5 U.S.C. § 8107(c)(12).

⁸ The Office arrived at the 2.7 weeks of compensation by issuing its nine percent schedule award for the wrong finger, the middle, or second finger, for which 30 weeks of compensation are provided for total loss in the Act, rather than the affected little, or fourth finger.

The October 18, 2002 decision of the Office of Workers' Compensation Programs is affirmed as amended.

Dated, Washington, DC
May 9, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member