

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL WHITE and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 03-985; Submitted on the Record;
Issued October 15, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

This case is on appeal before the Board for the third time. In its first decision dated March 25, 1999, the Board set aside the Office of Workers' Compensation Programs' hearing representative's January 30, 1997 decision denying appellant's claim for an additional schedule award because the hearing representative improperly relied on the impartial medical opinion of Dr. Joseph A. Fabiani, a Board-certified orthopedic surgeon. The Board remanded the case to the Office for further development of the medical record. The facts of the case are accurately set forth in that decision.¹

On remand, the Office referred appellant to Dr. Lawrence H. Schneider, a Board-certified orthopedic surgeon, for another impartial medical evaluation. He submitted a September 15, 1999 report, finding that appellant had a 25 percent loss of function of the left index finger which constituted a 2½ percent loss of use of the left index finger.

By decision dated November 3, 1999, the Office found that appellant was not entitled to an additional schedule award. The Office determined that appellant would receive less compensation for a 25 percent impairment of the left index finger than the compensation he received for a 5 percent impairment of the left hand. In a November 9, 1999 letter, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

In a May 11, 2000 decision, the hearing representative affirmed the Office's November 3, 1999 decision. Appellant appealed the hearing representative's decision to the Board.

¹ Docket No. 97-1766 (issued March 25, 1999).

In a July 5, 2001 decision, the Board set aside the hearing representative's decision on the grounds that the hearing representative improperly relied on the impartial medical opinion of Dr. Schneider. The Board stated that Dr. Schneider failed to specify which tables he used in the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to determine that appellant had a two and one-half percent permanent impairment of the left hand. Accordingly, the Board remanded the case to the Office to obtain clarification from Dr. Schneider.²

On remand the Office was unsuccessful in obtaining clarification from Dr. Schneider, as he had retired from medical practice. The Office referred appellant to Dr. Howard Caplan, a Board-certified orthopedic surgeon, who conducted an impartial medical examination and submitted a January 29, 2002 report. In his report, he provided a history of appellant's February 25, 1992 employment injury and medical treatment. On physical examination of appellant's left index finger, Dr. Caplan found, among other things, that appellant had a loss of motion of 90 degrees of the proximal interphalangeal (PIP) joint and a range of motion of 50 degrees of the distal interphalangeal (DIP) joint. He opined that appellant sustained a work-related crush injury to his left index finger with evidence of restricted motion of the DIP joint and decreased sensation with some hypersensitivity and dysesthesia and stated:

“Utilizing the [g]uidelines to the A.M.A., *Guides*, 5th [ed], [F]igures and [T]ables 16.7 and 16.21 as well as the Combined Values Scales and Guidelines [s]ection 16.3, B, C and D, [appellant] receives a permanent loss of his nondominant left index finger equal to 16.5 percent of the index finger and 3 percent of the hand, as per Table 16.1. This arrived at as a partial transfer sensory loss at the level distal to the distal interphalangeal joint of 7.5 percent and a loss of motion (flexion) of 20 degrees equivalent to a 10 percent permanent loss. Combining these two values, the Combined Values Chart, [p]age 604, gives him a total for the index finger of the above-noted 16.5 percent.”

On February 15, 2002 an Office medical adviser reviewed Dr. Caplan's findings and stated that he used the appropriate tables of the A.M.A., *Guides*. The Office medical adviser also stated that Dr. Caplan correctly found that appellant had a 16.5 percent impairment of the left index finger. The Office medical adviser rounded up Dr. Caplan's impairment rating based on the A.M.A., *Guides* and determined that appellant had a 17 percent impairment of the left index finger. The Office medical adviser also determined that appellant reached maximum medical improvement on January 8, 2002, the date of Dr. Caplan's medical examination.

By decision dated February 19, 2002, the Office found that appellant was not entitled to an additional schedule award. The Office found that, although Dr. Caplan properly applied the A.M.A., *Guides* in determining that appellant had a 17 percent impairment of the left index finger, he had already received compensation for more weeks, 12.20, for his 5 percent impairment of the left hand due to the accepted left index finger injury than the 9.82 weeks of compensation payable for the current award. The Office also found that appellant could not

² Docket No. 00-2636 (issued July 5, 2001).

receive an award for both the hand and the index finger on the same extremity due to the same injury, but he could receive medical benefits for the effects of his injury.

In a February 25, 2002 letter, appellant, through his attorney, requested an oral hearing. By decision dated December 12, 2002, the hearing representative affirmed the Office's February 19, 2002 decision.

The Board finds that appellant has no more than a five percent permanent impairment of his left hand, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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 A.M.A., *Guides*, has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

In this case, the Office relied on the impartial medical opinion of Dr. Caplan in finding that appellant did not have more than a five percent impairment of the left hand. When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁵

Dr. Caplan determined that appellant had a 16.5 percent impairment of the left index finger based on a 7.5 percent sensory loss at the distal level and a 10 percent loss of motion of the DIP joint. His impairment rating, however, failed to include his finding that appellant had 90 degrees of loss of motion of the PIP joint. Based on Table 16-23, page 502 of the A.M.A., *Guides*, 90 degrees of loss of motion constitutes a 6 percent impairment of the PIP joint. Utilizing the Combined Values Chart of the A.M.A., *Guides*, appellant has a 22 percent permanent impairment of the left index finger which constitutes a 4 percent impairment of the left hand based on Table 16-1, page 438. The Board finds that appellant is only entitled to a schedule award for a five percent impairment of his left hand which he already received.

Further, the schedule award for the five percent impairment of appellant's left hand is greater than a schedule award for a 22 percent impairment of the left index finger. The Act provides that for a complete loss of use of one hand an employee shall receive 244 weeks of compensation.⁶ Accordingly, the amount payable for a 5 percent loss of use of appellant's left

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404(1999).

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁶ 5 U.S.C. § 8107(c)(3).

hand would be 5 percent of 244 or 12.2 weeks of compensation.⁷ The amount payable for complete loss of use of an index finger under the Act is 46 weeks of compensation.⁸ Thus, the amount payable for a 22 percent loss of use of appellant's left index finger would be 22 percent of 46 or 10.12 weeks of compensation.⁹ For these reasons, appellant is not entitled to a schedule award for more than a five percent permanent impairment of his left hand.

The December 12, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 15, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.14(b) (December 1995).

⁸ 5 U.S.C. § 8107(c)(7).

⁹ *See supra* note 7.