

**United States Department of Labor
Employees' Compensation Appeals Board**

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CLARENCE W. CONNELL, Appellant)	
)	
and)	Docket No. 04-119
)	Issued: April 2, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Fort Worth, TX, Employer)	
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Appearances:
Clarence W. Connell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 15, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated August 27, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to greater than a 7 percent permanent impairment of the left upper extremity and an additional 8 percent permanent impairment of the right upper extremity for a total award of 12 percent permanent impairment of the right upper extremity, for which he has received a schedule award.

FACTUAL HISTORY

This is the second appeal. In the prior appeal, the Board, in affirming the hearing representative's decision, adopted the findings and conclusions of the hearing representative

which found the medical evidence insufficient to establish that appellant was entitled to receive a schedule award for permanent impairment of the upper extremities.¹

Subsequent to the Board's decision, the Office received a claim for a schedule award dated November 16, 1998 and a July 12, 1999 impairment rating from Dr. Joseph Daniels, an attending physician, who concluded that appellant had an 11 percent permanent impairment of the right upper extremity using the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*). On August 24, 1999 the Office requested the Office medical adviser to provide an opinion on the extent of any impairment appellant had in his right upper extremity and provide an impairment rating. In a report dated August 24, 1999, the Office medical adviser, using the fourth edition of the A.M.A., *Guides*, concluded appellant had an 11 percent permanent impairment of the right thumb which translated to a 4 percent permanent impairment of the right upper extremity.

In a decision dated August 31, 1999, the Office issued a schedule award for an 11 percent permanent impairment of the right thumb. The award was for 8.25 weeks and the period of the award was July 12 to September 7, 1999 or 8.25 weeks.

In a November 18, 1999 report, Dr. Daniels reported appellant had "complete ankylosis of the metacarpal phalangeal joint of the right thumb and some restriction of motion of the interphalangeal joint." He concluded appellant had a 10 percent impairment of his thumb based upon Table 12 of the fourth edition of the A.M.A., *Guides*.

In a letter dated March 8, 2000, appellant requested a review of the Office's decision. Appellant subsequently requested reconsideration by letter dated April 22, 2000.

On January 17, 2001 the Office referred appellant to Dr. Farooq I. Selod, a Board-certified orthopedic surgeon, for a second opinion on the extent of his impairment. In a report dated February 7, 2001, Dr. Selod, using the fourth edition of the A.M.A., *Guides*, reported that appellant had a 10 percent impairment of his right thumb, equivalent to a 4 percent impairment of the arm, due to ankylosis of the carpometacarpal joint. Dr. Selod used the grading procedure of Table 11 with the maximum due to sensory or motor deficits of the peripheral nerves of Table 5 to find a 3 percent impairment of each arm for motor loss (10 percent x 25 percent); and 4 percent impairment of each arm for sensory loss (10 percent x 38 percent).

In a March 1, 2001 report, the Office medical adviser reviewed Dr. Selod's report and, based upon the fifth edition of the A.M.A., *Guides*, concluded that appellant had a 7 percent impairment of the left upper extremity and a 12 percent impairment of the right upper extremity.

In a decision dated March 20, 2001, the Office issued a schedule award for a 7 percent permanent impairment of the left upper extremity and an additional 8 percent permanent impairment of the right upper extremity for a total award of 12 percent permanent impairment of the right upper extremity. The period of award was February 6 to December 30, 2001.

¹ Docket No. 95-2254 (issued July 11, 1997).

Appellant requested reconsideration by letter dated January 17, 2002 and also requested a new evaluation regarding his continuing disability due to his condition.

By decision dated August 27, 2003, the Office denied appellant's request for modification of the prior decision. The Office stated that appellant appeared to be raising the issue of disability in his January 17, 2002 letter and that disability had nothing to do with his impairment award. If appellant was claiming disability, the Office advised him to file a CA-7 form to claim disability for work and to provide supporting medical evidence for the dates he was claiming disability.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ 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*⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁶

ANALYSIS

Although Dr. Selod provided impairment findings, he did not provide impairment rating under the A.M.A., *Guides* (5th ed. 2001). In a report dated March 1, 2001, the Office medical adviser reviewed Dr. Selod's January 17, 2003 findings and determined that appellant had loss of motion due to ankylosis of the thumb joint at 20 degrees. Using Table 16-1 and 16-2 at pages 438 and 439 respectively, he explained that appellant had a 10 percent impairment of the right thumb which translated to a 5 percent impairment of the right upper extremity. The Office medical adviser found an impairment due to sensory and motor deficits of the median nerve. Utilizing Table 16-10 at page 482, he explained that the level of impairment for the sensory deficit was Grade 2 which equated to 10 percent. The Office medical adviser further explained that, in accordance with Table 16-15, at page 492, the maximum sensory impairment based on the median nerve was 39 percent. The 10 percent impairment when multiplied by the 39 percent impairment equaled a 4 percent impairment. Utilizing Table 16-11 at page 482, he explained

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁵ *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

⁶ FECA Bulletin No. 01-05 (issued January 29, 2001).

that the level of impairment for the motor deficit was Grade 4 which equated to 25 percent. The Office medical adviser further explained that, in accordance with Table 16-15, at page 492, the maximum motor impairment based on the median nerve below the midforearm was 10 percent. The 25 percent impairment when multiplied by the 10 percent impairment equaled a 3 percent impairment. The Office medical adviser then used to the Combined Values Chart at page 604 to reach a 12 percent impairment of the right upper extremity. The Board finds that the Office medical adviser properly determined appellant's impairment due to right carpal tunnel syndrome and right thumb fusion in accordance with Chapter 16.5d of the A.M.A., *Guides* (5th ed. 2001).⁷ Accordingly, appellant has failed to establish that he has more than a 12 percent permanent impairment of his right upper extremity.

Regarding the left upper extremity, the Office medical adviser determined that appellant had no impairment due to loss of range of motion of the left upper extremity. The Office medical adviser found an impairment due to sensory and motor deficits of the median nerve. Utilizing Table 16-10 at page 482, he explained that the level of impairment for the sensory deficit was Grade 2 which equated to 10 percent. The Office medical adviser further explained that, in accordance with Table 16-15, at page 492, the maximum sensory impairment based on the median nerve was 39 percent. The 10 percent impairment when multiplied by the 39 percent impairment equaled a 4 percent impairment. Utilizing Table 16-11 at page 482, he explained that the level of impairment for the motor deficit was Grade 4 which equated to 25 percent. The Office medical adviser further explained that, in accordance with Table 16-15, at page 492, the maximum motor impairment based on the median nerve below the midforearm was 10 percent. The 25 percent impairment when multiplied by the 10 percent impairment equaled a 3 percent impairment. The Office medical adviser then used to the Combined Values Chart at page 604 to reach a 7 percent impairment of the left upper extremity. The Board finds that the Office medical adviser properly determined appellant's impairment of the left upper extremity+ due to carpal tunnel syndrome in accordance with Chapter 16.5d of the A.M.A., *Guides* (5th ed. 2001).⁸ Accordingly, appellant has failed to establish that he has more than a seven percent permanent impairment of his left upper extremity.

CONCLUSION

The Board finds that appellant is not entitled to a greater than an 7 percent permanent impairment of the left upper extremity and an additional 8 percent permanent impairment of the right upper extremity for a total award of 12 percent permanent impairment of the right upper extremity.

⁷ *Robert V. DiSalvatore*, 54 ECAB ____ (Docket No. 02-2256, issued January 17, 2003).

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 27, 2003 is hereby affirmed.

Issued: April 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member