

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

EDRIDGE McNEILL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 02-1535
Issued: January 30, 2004**

Appearances:
Edridge McNeill, pro se
Miriam D. Ozur, Esq., for the Director

(Oral Argument Held: December 3, 2003)

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On May 16, 2002 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award dated March 4, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant has more than a one percent impairment of the left thumb for which he received a schedule award.

FACTUAL HISTORY

On December 21, 2000 appellant, then a 36-year-old custodian, filed a traumatic injury claim (Form CA-1), alleging that on November 28, 2000, while dumping recycling cans into a hamper, his left thumb got caught in the handle. The Office accepted appellant's claim for a fracture of the left thumb and authorized appropriate benefits. On December 31, 2001 appellant filed a claim for a schedule award.¹

By letter dated January 15, 2002, the Office requested that appellant's physician, Dr. Daniel H. Collector, a Board-certified family practitioner, provide a report to determine the extent of permanent impairment of the left thumb in accordance with the fifth edition of the A.M.A., *Guides*.²

In a January 25, 2002 report, Dr. Collector provided range of motion measurements on an Office form report and determined that appellant had a 25 percent impairment of the left thumb. He opined that appellant was at maximum medical improvement as of June 16, 2001.

On February 21, 2002 an Office medical adviser utilized the measurements provided by Dr. Collector, made findings and referred to specific pages and tables of the A.M.A., *Guides*. He determined that appellant was entitled to a schedule award of one percent permanent impairment of the left thumb.

By decision dated March 4, 2002, the Office issued a schedule award for one percent permanent impairment of the left thumb. The period of the award was .75 weeks, to run from November 20 to 25, 2001.

LEGAL PRECEDENT

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

¹ Appellant filed an earlier schedule award claim. However, the Office medical adviser indicated that appellant would not be at maximum medical improvement until November 28, 2001. The Office advised appellant that his claim for a schedule award would be held in abeyance until appellant reached his maximum medical improvement date and his physician provided the Office with new measurements utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

² The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses. As of February 1, 2001, the fifth edition of the A.M.A., *Guides* is to be used to calculate schedule awards.⁵

ANALYSIS

Appellant's treating physician, Dr. Collector, provided physical findings and concluded that appellant had a 25 percent impairment of the left thumb. However, he did not reference any specific tables of the A.M.A., *Guides*. He did not discuss how he arrived at his conclusion, or discuss to any tables of the A.M.A., *Guides* in determining the amount of the impairment. The Board therefore finds that as Dr. Collector did not include an impairment rating under the A.M.A., *Guides*, the Office properly relied upon the findings of the Office medical adviser.

The Office medical adviser reviewed the physical examination provided by Dr. Collector and determined that utilizing the fifth edition of the A.M.A., *Guides*, under Table 16-12, appellant had flexion of the joint of 80 degrees which represents a 0 percent impairment.⁶ He determined that, under Table 16-15, appellant had flexion of 50 degrees which represents a 1 percent impairment of the metacarpophalangeal joint.⁷ The Board finds that the probative evidence of record consists of the report of the Office medical adviser, who calculated appellant's impairment according to Tables 16-12 and 16-15 of the fifth edition of the A.M.A., *Guides*. There is no probative medical evidence of record establishing that appellant has more than a one percent impairment of the left thumb.

CONCLUSION

The Board finds that appellant has no more than a one percent impairment of the left thumb for which he received a schedule award.

⁵ FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁶ A.M.A., *Guides* 456, Table 16-12 (5th ed. 2001).

⁷ *Id.* at 457, Table 16-15.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 30, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member