

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

THOMAS JERGENS SOMERMEIER, Appellant	)	
	)	
and	)	<b>Docket No. 04-975</b>
	)	<b>Issued: October 7, 2004</b>
DEPARTMENT OF HOMELAND SECURITY,	)	
TRANSPORTATION SECURITY	)	
ADMINISTRATION, Kahului, HI, Employer	)	
	)	

*Appearances:*  
*Thomas Jergens Somermeier, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On March 3, 2004 appellant filed a timely appeal from the February 10, 2004 merit decision of the Office of Workers' Compensation Programs granting a schedule award for a nine percent impairment of the right upper extremity. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

**ISSUE**

The issue on appeal is whether appellant has more than a nine percent impairment to his right upper extremity for which he received a schedule award.

**FACTUAL HISTORY**

On July 7, 2003 appellant, then a 34-year-old transportation security screener, filed a claim alleging that on June 22, 2003 he cut his right index finger on an open utility knife while in the performance of duty. Appellant received continuation of pay from June 22 to August 6, 2003

and resigned effective September 8, 2003. The Office accepted a right index finger laceration and authorized tendon repair and subsequent physical therapy.

On August 1, 2003 appellant filed a claim for a schedule award. In a report dated August 14, 2003, Dr. Peter Galpin, a treating physician Board-certified in plastic surgery, noted appellant's right index finger condition and prescribed physical therapy three times a week for two weeks. Dr. Galpin also noted that appellant had not reached maximum medical improvement. He did not provide an impairment rating evaluation.

On August 22, 2003 the Office advised appellant to submit a final report from his physician which described any permanent impairment of his right index finger. In a report dated August 14, 2003, Dr. Galpin stated that appellant was totally disabled from June 22 to September 8, 2003 as a result of his June 22, 2003 work-related injury and surgical repair.

On December 8, 2003 the Office referred appellant to Dr. David A. Sheetz, Board-certified in physical medicine and rehabilitation, for a second opinion examination to determine the extent of permanent impairment of the right index finger due to the June 22, 2003 employment injury.

In a January 6, 2004 report, Dr. Sheetz recorded range of motion findings of the right index finger and noted in an attached report that appellant had mild pain in the index finger which interfered with activity. He noted sensory loss in the dorsal region of the index finger, that the two-point discrimination value registered 6 millimeters, and that appellant had transverse and partial longitudinal sensory loss in the dorsal surface from the proximal interphalangeal (PIP) joint. Dr. Sheetz reported right-sided grip weakness and stated that appellant had reached maximum medical improvement. In a report dated February 2, 2004, Dr. Arthur S. Harris, an Office medical adviser and a Board-certified orthopedic surgeon, reviewed the medical evidence and determined that appellant had a nine percent impairment of the right upper extremity.

By decision dated February 10, 2004, the Office granted appellant a schedule award for a nine percent impairment of the right upper extremity. The period of award ran for 28.08 weeks, from January 6 to July 20, 2004.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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*

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

*Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>3</sup>

### **ANALYSIS**

In the instant case, Dr. Harris, an Office medical adviser, applied the A.M.A., *Guides* to the physical findings of Dr. Sheetz to determine that appellant was entitled to a nine percent impairment for the right upper extremity. Dr. Harris noted appellant's right index finger of 25 degrees of range of flexion of the distal interphalangeal joint for a 24 percent impairment,<sup>4</sup> 75 degrees of flexion of the PIP joint for a 15 percent impairment,<sup>5</sup> and 85 degrees of flexion of the metacarpophalangeal joint for a 3 percent impairment.<sup>6</sup> Using the Combined Values Chart, this resulted in a 37 percent impairment of the index finger for loss of range of motion.<sup>7</sup> Dr. Harris then found that appellant had a 15 percent impairment based on partial loss of sensation,<sup>8</sup> which, when combined with the impairment for loss of range of motion, resulted in a 52 percent impairment of the right index finger.<sup>9</sup> He noted that a 52 percent right index finger impairment was the equivalent of a 10 percent impairment of the right hand,<sup>10</sup> which was the equivalent of a 9 percent permanent impairment of the upper extremity.<sup>11</sup>

The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the report of Dr. Sheetz to determine that appellant has no more than a nine percent impairment of the right upper extremity. There is no medical evidence of record establishing that appellant has more than a nine percent impairment to his right upper extremity. No physician of record opined that, pursuant to the A.M.A., *Guides*, appellant had a greater impairment than that for which he received an award. There is no basis for a greater award.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he is entitled to more than a nine percent schedule award for the right upper extremity.

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<sup>3</sup> See 20 C.F.R. § 10.404; *Jacqueline S. Harris*, 54 ECAB \_\_\_\_ (Docket No. 02-203, issued October 4, 2002).

<sup>4</sup> A.M.A., *Guides* 461, Figure 16-21.

<sup>5</sup> *Id.* at 463, Figure 16-23.

<sup>6</sup> *Id.* at 464, Figure 16-24.

<sup>7</sup> *Id.* at 604.

<sup>8</sup> *Id.* at 448, Table 16-7.

<sup>9</sup> *Id.* at 608. The Board notes that, using the Combined Values Chart, a 37 percent impairment when combined with a 15 percent impairment results in a 46 percent impairment, a result lower than the conclusion of the Office medical adviser.

<sup>10</sup> *Id.* at 438, Table 16-1.

<sup>11</sup> *Id.* at 439, Table 16-2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 10, 2004 is affirmed.

Issued: October 7, 2004  
Washington, DC

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member