

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

CAROLYN J. VERBURGT, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Omro, WI, Employer**

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**Docket No. 04-2289
Issued: February 8, 2005**

Appearances:
Carolyn J. Verburgt, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On September 21, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated May 18, 2004. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

ISSUE

The issue is whether appellant has more than a 12 percent permanent impairment to her right upper extremity.

FACTUAL HISTORY

Appellant, a 50-year-old distribution clerk, filed a Form CA-2 claim for benefits on August 19, 2003 alleging that she developed a right thumb and hand condition causally related to factors of employment.

By decision dated November 10, 2003, the Office denied the claim, finding that appellant failed to submit medical evidence sufficient to establish that she sustained a right hand condition in the performance of duty.

By letter dated December 5, 2003, appellant requested an oral hearing.

By decision dated March 4, 2004, an Office hearing representative set aside the November 10, 2003 Office decision, finding based on review of the written record that appellant had submitted medical evidence sufficient to require a remand for further development of the case record.

The case record was referred to Dr. Vijay V. Kulkarni, a Board-certified orthopedic surgeon, who stated in a March 25, 2004, report that appellant had degenerative arthritis of carpometacarpal (CMC) joint of the right thumb. Dr. Kulkarni advised that there was a causal relationship between appellant's current complaints and her injury. He stated that the work exposure of repetitive movement of appellant's right hand and thumb was consistent with aggravation of preexisting degenerative arthritis of the right thumb. Dr. Kulkarni noted that appellant had undergone surgery for excision arthroplasty of the right thumb; he rated appellant for an 11 percent impairment of the upper extremity due to resection arthroplasty of CMC joint of the thumb pursuant to Table 16-27, page 506 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fifth edition. On April 19, 2004 the Office accepted appellant's claim for permanent aggravation of preexisting degenerative arthritis of the CMC joint of the right thumb.

In a memorandum/impairment evaluation dated April 29, 2004, an Office medical adviser reviewed Dr. Kulkarni's findings and conclusions and applied them to the applicable figures and tables of the A.M.A., *Guides*. The Office medical adviser adopted Dr. Kulkarni's 11 percent right upper extremity impairment rating based on Table 16-27, page 506 and additionally awarded 1 percent impairment for Grade 4 sensory loss over the dorsum of the first webspace in the radial nerve distribution, pursuant to Table 16-10, page 482 and Table 16-15, page 492. Using the Combined Values Chart at page 604 of the A.M.A., *Guides*, the Office medical adviser calculated a 12 percent permanent impairment of the right upper extremity.

On May 11, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right upper extremities.

On May 18, 2004 the Office granted appellant a schedule award for a 12 percent impairment rating for the right upper extremity for the period January 26 to March 28 2004, for a total of 9 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, fifth edition as the standard to be used for evaluating schedule losses.³

ANALYSIS

In this case, the Office medical adviser, applying Dr. Kulkarni's findings and calculations to the applicable tables and figures of the A.M.A., *Guides*, computed a 12 percent impairment of the right upper extremity. Pursuant to the A.M.A., *Guides*, based on appellant's surgery for resection arthroplasty of CMC joint of the thumb, Table 16-27, page 506 of the A.M.A., *Guides* is rated as an 11 percent impairment of the upper extremity. An additional one percent impairment for Grade 4 sensory loss over the dorsum for the first webspace in the radial nerve distribution is rateable pursuant to Table 16-10, page 482 and Table 16-15, page 492. Using the Combined Valued Chart at page 604 of the A.M.A., *Guides*, the Office medical adviser properly calculated a 12 percent permanent impairment of the right upper extremity.

As there is no other medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than a 12 percent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has no more than a 12 percent impairment of the right upper extremity.

³ 20 C.F.R. § 10.404.

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member