

In a report dated May 31, 2005, Dr. Johan Penninck, an orthopedic surgeon, reported that appellant had 40 degrees of thumb flexion, with full extension. He stated that appellant had suffered a dislocation of the interphalangeal joint of the left thumb. Dr. Penninck opined that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), 40 degrees of flexion was a three percent hand impairment, three percent upper extremity impairment or a two percent whole body impairment. The date of maximum medical improvement was reported as May 23, 2005.

The case was referred to an Office medical adviser for review. In a report dated March 10, 2006, the Office medical adviser opined that 40 degrees of thumb flexion was three percent thumb impairment under the A.M.A., *Guides*, citing Figure 16-12. The Office medical adviser noted that this was equivalent to one percent upper extremity impairment. He reported the date of maximum medical improvement as May 23, 2005.

By decision dated June 20, 2006, the Office issued a schedule award for a three percent left thumb impairment. The period of the award was 2.25 weeks from May 23, 2005. The decision stated that the period of the award was May 23 to June 13, 2005. The payment issued was for the period May 23 to June 7, 2005.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

ANALYSIS

The report from attending physician, Dr. Penninck, indicated that appellant had 40 degrees of left thumb flexion and based on this finding he opined that appellant had three percent impairment to the hand and arm. As discussed by the Office medical adviser, however, a proper application of the A.M.A., *Guides* is based on Figure 16-12. This figure provides impairments to the thumb based on abnormal motion of the IP joint. Forty degrees of flexion in the IP joint is three percent thumb impairment.⁴

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404.

³ *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁴ A.M.A., *Guides* 456, Figure 16-12.

Based on the medical evidence of record, appellant had a three percent permanent impairment to the left thumb. A schedule award is paid based on the number of weeks set forth in the Act and its regulations for the scheduled member. Under 5 U.S.C. § 8107(c)(6), the maximum number of weeks of compensation for the loss of use of the thumb is 75 weeks, therefore, appellant was entitled to three percent or 2.25 weeks.

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁵ The medical adviser and the attending physician, Dr. Penninck, indicated that this was May 23, 2005. Appellant was, therefore, entitled to 2.25 weeks from May 23, 2005.

The June 20, 2006 decision improperly reported the period of the award as May 23 to June 13, 2005. On appeal, appellant's primary concern was clarifying the number of weeks of compensation. Although not included in the case record submitted to the Board, appellant submitted a copy of a schedule award dated May 18, 2006 that purported to be for 3.12 weeks of compensation, from May 23 to June 13, 2005, for a one percent impairment of the left arm. According to appellant, he did not receive a payment pursuant to this decision as there was a problem with the direct deposit process. The Board notes that appellant would not be entitled to a left arm impairment based on the evidence of record. The impairment as described by Dr. Penninck was limited to the thumb and used an impairment method that was limited to the thumb.⁶

The period of the award found in the June 20, 2006 decision was apparently an inadvertent error that repeated the period for 3.12 weeks of compensation. Appellant was entitled to 2.25 weeks from May 23 to June 7, 2005 and the record indicated that appellant received an appropriate payment for this period.

CONCLUSION

The Office properly issued a schedule award for a three percent permanent impairment to his left thumb commencing May 23, 2005.

⁵ *Albert Valverde*, 36 ECAB 233, 237 (1984).

⁶ *See Asline Johnson*, 42 ECAB 619 (1991) (in this case the impairment included both a thumb impairment and a hand impairment and the Board found that the schedule award should be paid based on loss of use of the hand).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 20, 2006 is affirmed.

Issued: February 7, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board