

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

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**G.O., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ARMY  
DEPOT, Tobyhanna, PA, Employer**

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**Docket No. 09-239  
Issued: August 13, 2009**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 3, 2008 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated October 23, 2008 issuing a schedule award for four percent impairment of the left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant has established that he has greater than four percent impairment of the left upper extremity, for which he received a schedule award.

**FACTUAL HISTORY**

On February 27, 2008 appellant, then a 59-year-old electronics mechanic, filed a traumatic injury claim alleging that on May 14, 2007 he sustained a left thumb laceration when, while cutting a strap on an antenna, he cut his thumb with a utility knife. On March 12, 2008 the Office accepted appellant's claim for open wound of left finger without complications.

On September 9, 2008 appellant filed a claim for a schedule award. In support of his claim for a schedule award, he submitted a June 13, 2008 report by Dr. Emmanuel Jacob, a Board-certified physiatrist, who noted that, since appellant's work injury on May 14, 2007, he had pain and sensitivity of his left thumb. Dr. Jacob listed his diagnoses as: (1) laceration of left thumb with neuropraxia; and (2) left thumb digital neuritis/neuropathy. He opined that appellant had 10 percent impairment of his right upper extremity. Dr. Jacob calculated that appellant had a seven percent impairment based on loss of power deficit. He calculated this figure by finding that appellant's left hand grip was a Grade 4/5, which was equivalent to 20 percent motor deficit pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001).<sup>1</sup> Dr. Jacob then noted that appellant was entitled to a maximum impairment of 35 percent for motor deficit,<sup>2</sup> which yielded an impairment of 7 percent of the upper extremity. He then evaluated peripheral nerve system impairment based on left thumb digital sensory impairment and left thumb median nerve digital neuropathy.<sup>3</sup> Dr. Jacob found that, utilizing the A.M.A., *Guides*, appellant had a Grade 3 impairment, which he determined using the A.M.A., *Guides* Table 16-10 and his clinical judgment indicated 40 percent severity for sensory deficit or pain.<sup>4</sup> He noted that the maximum impairment of the upper extremity due to sensory deficit or pain of the median nerve was seven percent.<sup>5</sup> Multiplying the grade of severity, 40 percent, by the maximum upper extremity impairment, 7 percent, Dr. Jacob calculated that appellant had 3 percent upper extremity impairment due to peripheral nerve system impairment (2.8 percent rounded up to 3 percent).

By memorandum dated October 16, 2008, the Office asked the Office medical adviser to determine appellant's impairment due to his open wound on left finger. On October 19, 2008 the Office medical adviser opined that appellant was entitled to four percent schedule award due to impairment of his left upper extremity. He discussed Dr. Jacob's opinion that appellant was entitled to seven percent impairment for left upper extremity weakness, but contended that the A.M.A., *Guides* indicate that decreased strength cannot be rated in the presence of painful conditions, further noting that appellant did not meet the criteria for any of the exceptions to this rule.<sup>6</sup> The Office medical adviser further stated that, while Dr. Jacob recommended a greater impairment based upon determination of impairment due to motor loss of power deficits resulting from peripheral nerve disorders of individual muscle rating, as appellant had sensory abnormalities, it would be more appropriate to utilize Table 16-15, as Dr. Jacob also indicated. He noted that Table 16-15 indicated that radial palmar digital thumb nerve is seven percent maximum deficit for sensory loss of pain. The Office medical adviser then indicated that Dr. Jacob recommended 50 percent for Grade 3 classification sensory deficit or pain, which he multiplied by 7 percent maximum deficit for sensory loss or pain for the ulnar palmar digital of

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<sup>1</sup> A.M.A., *Guides* 484, Table 16-11.

<sup>2</sup> *Id.* at 489, Table 16-13.

<sup>3</sup> *Id.* at 486, Table 16-12b; 488, Figure 16-48.

<sup>4</sup> *Id.* at 482, Table 16-10.

<sup>5</sup> *Id.* at 492, Table 16-15.

<sup>6</sup> *Id.* at 508, paragraph 16.8a.

thumb, which equaled 3.5 percent which he rounded off to 4 percent upper extremity impairment.<sup>7</sup>

By decision dated October 23, 2008, the Office issued a schedule award for four percent of the upper left extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>8</sup> and its implementing regulations,<sup>9</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, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>10</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>11</sup>

### **ANALYSIS**

The Board finds that the medical evidence of record does not establish that appellant has more than four percent impairment of his left upper extremity.

Appellant's treating physiatrist, Dr. Jacob, provided a detailed description of the results of his physical examination. He listed his diagnoses as laceration of the left thumb with neuropraxia and left thumb digital neuritis/neuropathy. Dr. Jacob found that appellant had 10 percent impairment of his left upper extremity. In reaching this conclusion, he calculated that appellant had 7 percent impairment based on loss of power deficit as well as 3 percent impairment based on a Grade 3 impairment, for which he indicated equaled 40 percent impairment of the ulnar palmar digital of thumb, which equaled an additional 3 percent impairment.

Pursuant to the A.M.A., *Guides*, in a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*, the loss of strength may be rated separately. In the rare case when the examiner judges that the loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength could be combined with the other impairments only if based on unrelated etiologic or pathomechanical causes. Otherwise,

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<sup>7</sup> *Id.* at 492, 482, Table 16-10. Table 16-15.

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404.

<sup>10</sup> *Id.* at § 10.404(a).

<sup>11</sup> *Id.*

the impairment ratings based on objective anatomic findings take precedence.<sup>12</sup> Dr. Jacob gave no explanation as to why appellant's case warranted a special award for loss of strength. Accordingly, he erred when he found that appellant was entitled to seven percent impairment based on loss of power deficit; a rating based on objective anatomic findings should take precedence. Accordingly, Dr. Jacob's finding that appellant had 10 percent impairment of his left upper extremity is not proper.

The Office medical adviser, relying on Dr. Jacob's findings, concluded that appellant had four percent impairment of the left upper extremity. In reaching this conclusion, he noted that Dr. Jacob recommended 50 percent for a Grade 3 classification for sensory deficit or pain, which he multiplied by 7 percent maximum deficit for sensory loss or pain in the ulnar palmar digital thumb, which he found equaled an impairment of 3.5 percent which he rounded off to 4 percent upper extremity impairment.<sup>13</sup> The Office made its rating based on the opinion of the Office medical adviser. The Board finds that the Office properly found that the Office medical adviser properly applied the A.M.A., *Guides* and found that appellant was not entitled to greater than four percent impairment of the left upper extremity.<sup>14</sup>

### CONCLUSION

The Board finds that appellant has not established that he has greater than four percent impairment of this left upper extremity, for which he received a schedule award.

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<sup>12</sup> A.M.A., *Guides* 508, 16.8a.

<sup>13</sup> *Id.* at 482, Table 16-10; 492, Table 16-15.

<sup>14</sup> The Board notes that Dr. Jacob recommended 40 percent, not 50 percent, for classification for severity for sensory deficit or pain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 23, 2008 is affirmed.

Issued: August 13, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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