

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

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A.Q., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Chicago, IL, Employer )

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**Docket No. 08-2298  
Issued: September 30, 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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 4, 2008 appellant, through his attorney, filed a timely appeal from an April 17, 2008 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this claim.

**ISSUE**

The issue is whether appellant has more than two percent impairment to his left upper extremity for which he received a schedule award.

On appeal, appellant contends that he has 18 percent impairment of his hand pursuant to the July 10, 2007 report of Dr. Harold T. Pye, Board-certified in occupational medicine.

**FACTUAL HISTORY**

On November 16, 2003 appellant, then a 32-year-old letter carrier, filed an occupational disease claim alleging acute pain in his left thumb and left wrist. He attributed his condition to the stresses placed on his hands by long-term use of rubber bands, constant gripping and

squeezing bundled mail and the methods in sorting and delivering mail while on street operations. The Office accepted appellant's claim for left thumb tendinitis and de Quervain's tenosynovitis, left thumb ulnar collateral ligament and metacarpophalangeal sprain/strain. It paid compensation and medical benefits.

On February 23, 2007 appellant filed a claim for a schedule award. By letter dated March 5, 2007, the Office requested that he submit a medical report to establish that he sustained permanent impairment due to his accepted conditions.

On April 30, 2007 the Office referred appellant to Dr. Gerald Harris, a Board-certified orthopedic surgeon specializing in surgery of the hand, on the issue of whether he could deliver and carry mail.<sup>1</sup> In a report dated May 31, 2007, Dr. Harris discussed appellant's work restrictions and listed his findings with regard to his range of motion. Appellant's clinical presentation was consistent with a partial injury to the ulnar collateral ligament of the left thumb at the level of the metacarpophalangeal (MCP) joint. Dr. Harris noted that appellant could continue to perform the modified work. In a report dated June 19, 2007, he listed findings on range of motion for the left thumb: 0/55, metacarpophalangeal (MP); 0/70, interphalangeal (IP). Dr. Harris noted that appellant's clinical presentation was consistent with a partial injury to the ulnar collateral ligament of the left thumb at the level of the MCP joint. He also noted symptoms related to degenerative arthritis of the left thumb at the level of the MCP joint, but none clearly visible on x-ray evaluation. Dr. Harris advised that appellant had five percent impairment of his left thumb on May 30, 2007 based on decreased range of motion at the level of the MCP joint. He did not specifically refer to any tables of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

On July 10, 2007 Dr. Pye advised that appellant had an 18 percent impairment of the left hand or 16 percent impairment of the left upper extremity. He made a general reference to having used Table 16-8, 16-9, 16-12, 16-15 and 16-27 of the A.M.A., *Guides*. Dr. Pye found five percent impairment of the thumb due to 15 degrees flexion of the IP and four percent impairment due to 25 degrees flexion of the MP.<sup>2</sup> In rating appellant's carpometacarpal joint, he noted seven percent impairment due to 25 degrees radial abduction, six percent impairment due to 5 centimeters (cm) adduction and four percent impairment due to 4 cm opposition.<sup>3</sup> Dr. Pye added the total loss of range of motion to the digit as 31 percent to the thumb. He added 19 percent additional impairment to find total impairment of 44 percent to the thumb digit.<sup>4</sup> Dr. Pye

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<sup>1</sup> The Board notes that the Office found a conflict in the medical opinion between Dr. Pye, appellant's treating physician, and Dr. Leonard R. Smith, a Board-certified orthopedic surgeon and second opinion physician, as to appellant's work restrictions. The Office did not refer appellant to Dr. Harris for an impartial medical examination with regard to appellant's permanent impairment for schedule award purposes.

<sup>2</sup> The ranges of motion for extension of the two joints were within normal zero percent impairment.

<sup>3</sup> The Board notes that Dr. Pye actually utilized Figure 16-12 and 16-15 (pages 456-457), not Table 16-12 and 16-15.

<sup>4</sup> The Board notes that Dr. Pye did not specifically list the figure or table applied to rate the additional 19 percent impairment.

converted this under Table 16-1 to find 18 percent impairment to the left hand or, under Table 16-2, a total impairment to the upper extremity of 16 percent.

On April 11, 2008 an Office medical adviser reviewed the medical evidence and advised that the findings of Dr. Harris were utilized to rate impairment to appellant's left upper extremity based on the accepted conditions. The Office medical adviser first rated impairment based on loss of motion, as follows: MP extension -- 0 degrees -- zero percent; MP flexion -- 55 degrees -- one percent; IP extension -- 0 degrees -- one percent; IP flexion -- 70 degrees -- one percent; A.M.A., *Guides*, 457, Figure 16-15; A.M.A., *Guides* 456, Figure 16-12. He noted that the total loss of range of motion to the digit was three percent impairment, which, under Table 16-1 and 16-2, was one percent to the left upper extremity. The Office medical adviser also rated impairment due to sensory loss or pain. He advised that appellant had one percent sensory impairment due to Grade 4 pain (25 percent) in the distribution of the radial nerve. Combined, this totaled two percent impairment to the left upper extremity.

On April 17, 2008 the Office granted a schedule award for a two percent impairment of the left upper extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>5</sup> and its implementing regulations<sup>6</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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

### **ANALYSIS**

The Board finds that the case is not in posture for decision due to an unresolved conflict in medical opinion.

On July 10, 2007 Dr. Pye found a total 18 percent impairment to the hand, which was also a 16 percent impairment of the left upper extremity. He based his impairment estimates on loss of range of motion to the left thumb joints. Fifteen degrees flexion of the IP joint was five percent impairment; 25 degrees flexion of the MP joint was four percent impairment; 25 degrees radial abduction was seven percent impairment of the CMC joint; five cm adduction of the CMC joint was six percent impairment and four cm opposition of the CMC joint was nine percent impairment. Under the A.M.A., *Guides*, the total loss to the thumb digit is the sum of each motion of unit, in this case 31 percent. The Board notes that, under Table 16-1, 31 percent impairment to the thumb represents 12 percent of the hand which, under Table 16-2, represents

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

11 percent impairment to the upper extremity. Dr. Pye added an additional 19 percent impairment to the 31 percent thumb digit range of motion to total 44 percent to the thumb before converting the impairment of the digit into the hand and upper extremity. However, he did not adequately address the reason for doing so. Dr. Pye's rating chart contains only a vague reference to Table 16-27 of the A.M.A., *Guides*, which provides for impairment to the upper extremity after arthroplasty. However, the medical evidence does not reflect that appellant underwent an arthroplasty of his left thumb. Dr. Pye combined the loss of motion impairment of 31 percent with the unexplained 19 percent impairment to total 44 percent,<sup>7</sup> which converted to 18 percent impairment to the hand<sup>8</sup> or a left upper extremity impairment of 16 percent.<sup>9</sup>

On June 19, 2007 Dr. Harris listed loss of range of motion to appellant's left thumb for the MCP joint as 0/55 and for the IP joint was 0/70. He concluded that appellant had a five percent impairment of his left thumb on May 30, 2007 based on decreased range of motion at the MCP joint. However, Dr. Harris did not explain how the A.M.A., *Guides*, supported five percent impairment. Fifty five degrees flexion of the MP joint under Figure 16-15 represents one percent impairment and 0 degrees extension represents no impairment.<sup>10</sup> Under Figure 16-12, 70 degrees flexion is one percent impairment of the IP joint and 0 degrees extension is one percent impairment.<sup>11</sup> This is a total of three percent impairment as noted by the Office medical adviser on April 11, 2008 and is in marked contrast to the 31 percent impairment to the digit recorded by Dr. Pye.

The Office medical adviser converted the three percent loss for range of motion of the digit under Table 16-1, to total one percent impairment of the hand, which under Table 16-2, is one percent impairment to the left upper extremity.<sup>12</sup> To this, the Office medical adviser added 1 percent impairment of the left upper extremity for Grade 4 pain (25 percent) in the distribution of the radial nerve.<sup>13</sup> However, the Board notes that in multiplying the 25 percent sensory deficit allowed for Grade 4 pain in the distribution of the radial nerve by the 7 percent maximum impairment allowed under Table 16-15, this yields a 1.75 percent impairment which, when rounded to the next whole number, is two percent sensory impairment.<sup>14</sup> Combining the one percent range of motion impairment of the upper extremity with two percent for sensory loss, results in three percent impairment of the left arm.

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<sup>7</sup> A.M.A., *Guides* 606.

<sup>8</sup> *Id.* at 438, Table 16-1

<sup>9</sup> *Id.* at 439, Table 16-2.

<sup>10</sup> *Id.* at 457, Figure 16-15.

<sup>11</sup> *Id.* at 456, Table 16-12.

<sup>12</sup> *Id.* at 438, Table 16-1; 439, Table 16-2.

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

<sup>14</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b (September 1994). The Board notes that the Office medical adviser rounded down to 1.00 from 1.75 instead of up to 2.00.

The Board finds a conflict in medical opinion between Dr. Pye and Dr. Harris as to the extent of permanent impairment contributed to the joints of appellant's left thumb.<sup>15</sup> Dr. Pye found total impairment to the joints of the left thumb of 31 percent while Dr. Harris listed findings which total 3 percent. On remand the Office should refer appellant for examination and an impairment rating of his left thumb. The medical specialist should be requested to address whether impairment is of the thumb digit, the hand or extends to the full upper extremity and which method for rating impairment is most appropriate in this case. After such further development and the Office deems necessary, it should issue an appropriate decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 17, 2008 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further development in conformance with this decision.

Issued: September 30, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> See *Talmadge Miller*, 47 ECAB 673 (1996).