

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

J.M., Appellant)	
)	
and)	Docket No. 10-467
)	Issued: September 16, 2010
U.S. POSTAL SERVICE, POST OFFICE,)	
Oklahoma City, OK, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 8, 2009 appellant filed a timely appeal from the November 16, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant is entitled to an increased schedule award as a result of his September 7, 1998 employment injury.

FACTUAL HISTORY

On the prior appeal,¹ the Board noted that appellant, a mail handler, sustained a partial amputation of his left thumb while in the performance of duty on September 7, 1998. Finding that he had no more than 19 percent impairment of his left upper extremity, the Board affirmed

¹ Docket No. 00-2411 (issued June 12, 2001).

the Office's January 13, 2000 schedule award.² The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

Appellant filed a claim for an additional schedule award. Dr. John W. Ellis, a Board-certified family physician, provided the impairment evaluation. On December 15, 2008 he found a thumb impairment of 10 percent for amputation, 17 percent for loss of motion and 20 percent for sensory loss. These impairments combined for 41 percent total impairment of the thumb.³ A 41 percent impairment of the thumb represents 16 percent impairment of the hand⁴ and 14 percent impairment of the upper extremity.⁵

Dr. Ellis also found six percent impairment of the upper extremity due to loss of wrist motion. This combined with the 14 percent impairment of the upper extremity due to the thumb for 19 percent total impairment of the left upper extremity. Dr. Ellis stated:

“There is 41 percent impairment of the left thumb. He previously had 19 percent schedule award for the left thumb. The continued infection of the left thumb has caused more impairment of the left thumb with consequential injury to the left wrist for a total impairment of 19 percent to the left upper extremity due solely to [the September 7, 1998 employment injury].”

An Office medical adviser reviewed Dr. Ellis' findings and confirmed that they showed a 19 percent total impairment of the left upper extremity.

On June 25, 2009 the Office issued a decision denying appellant's claim for an increased schedule award. It explained that he previously received a schedule award for 19 percent impairment of his left upper extremity and that the medical evidence did not support an increase in the upper extremity impairment already compensated.

On November 16, 2009 an Office hearing representative affirmed. She found no basis for an increased award.

² The Office issued this award based on the following impairments: 3 percent of thumb = 1 percent of hand = 1 percent of upper extremity for loss of range of motion; 10 percent of upper extremity for motor deficit or loss of grip strength; 10 percent of thumb = 4 percent of hand = 4 percent of upper extremity for sensory abnormality; and 13 percent of thumb = 5 percent of hand = 5 percent of upper extremity for amputation with no loss of bone. The Office combined (not added) the upper extremity impairments -- 1, 10, 4, 5 -- to find a 19 percent impairment of the left upper extremity.

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* 604 (5th ed. 2001) (Combined Values Chart).

⁴ *Id.* at 438, Table 16-1.

⁵ *Id.* at 439, Table 16-2.

Appellant asks the Board to review the Office's November 16, 2009 decision and makes the following argument:

"The basis of my initial CA-7 (September 15, 2008) and appeal have been blatantly overlooked. There is no question that I have been paid for the original schedule award of 19 percent. The dispute is with the additional 22 percent impairment. The determination of this was stated in Dr. Ellis' medical summary dated December 15, 2008. The total impairment he concluded was 41 percent, which is clearly stated. He has included the original 19 percent which leave 22 percent for which I am entitled to. Once again, I am submitting this decision to be reassessed."

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁶ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. For the complete loss of a thumb, the Act provides 75 weeks of compensation.⁷ For the complete loss of a hand, 244 weeks of compensation.⁸ For the complete loss of an upper extremity (arm), 312 weeks of compensation.⁹ Compensation for partial losses is proportionate.¹⁰

Where the residuals of an injury to a member of the body specified in the schedule extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, or a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.¹¹

The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.¹²

ANALYSIS

Appellant has nicely laid out his dispute with the Office's November 16, 2009 decision. He previously received a schedule award for 19 percent impairment. Dr. Ellis, the family physician who most recently evaluated his impairment, reported 41 percent impairment. Indeed, he stated the following: "There is 41 percent impairment of the left thumb. Dr. Ellis previously

⁶ 5 U.S.C. § 8107.

⁷ *Id.* at § 8107(c)(6).

⁸ *Id.* at § 8107(c)(3).

⁹ *Id.* at § 8107(c)(1).

¹⁰ *Id.* at § 8107(c)(19).

¹¹ *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983).

¹² 20 C.F.R. § 10.404.

had 19 percent schedule award for the left thumb.” So it would appear that he reported 22 percent increase in appellant’s left thumb impairment.

Dr. Ellis’ second statement is misleading. Appellant previously received a schedule award for 19 percent impairment of his left upper extremity, not for 19 percent impairment of his left thumb. The schedule award included 3 percent thumb impairment for loss of motion, 10 percent thumb impairment for sensory abnormality, 13 percent thumb impairment for amputation with no loss of bone, and 10 percent upper extremity impairment for loss of grip strength. So in a general sense the previous schedule award was “for the left thumb,” as Dr. Ellis put it, or for all the impairments caused by the accepted left thumb injury. But the specific impairment rating -- 19 percent -- represented the impairment of appellant’s left upper extremity, not the impairment of his left thumb. That is why the Office’s January 13, 2000 decision awarded him 59.28 weeks of compensation (19 percent times 312 weeks of compensation for the loss of an upper extremity) and not 14.25 weeks of compensation (19 percent times 75 weeks of compensation for the loss of a thumb).

After appellant received a schedule award for 19 percent impairment of his left upper extremity, Dr. Ellis found that he still had 19 percent impairment of his left upper extremity. So the Office is correct: Dr. Ellis’ impairment rating offers no basis for an increased schedule award.

Appellant has the burden to show that his total impairment has increased, but the evidence he submitted does not support his claim. Dr. Ellis did find an increase in thumb impairment, and he included loss of wrist motion, which was not included in the previous award. These regional impairments were offset by the exclusion of grip strength because the fifth edition of the A.M.A. *Guides* did not allow Dr. Ellis to rate grip strength separately.¹³ Despite 41 percent impairment of his left thumb,¹⁴ appellant still had 19 percent impairment of the left upper extremity.

Because the evidence appellant submitted to support his claim for an increased schedule award does not show more than a 19 percent impairment of the left upper extremity, for which he previously received compensation, the Board will affirm the Office’s November 16, 2009 decision.

¹³ A.M.A., *Guides* 507-08 (5th ed. 2001). 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, but only if the loss of strength is based on unrelated etiologic or pathomechanical causes and if decreased motion or painful conditions do not prevent effective application of maximal force in the region being evaluated. Otherwise, impairment ratings based on objective anatomic findings take precedence.

¹⁴ Forty-one percent impairment of the left thumb is only 30.75 weeks of compensation (41 percent times 75 weeks of compensation for the loss of a thumb), which is less than the 59.28 weeks of compensation appellant previously received.

CONCLUSION

The Board finds that appellant is not entitled to an increased schedule award as a result of his September 7, 1998 employment injury. Appellant's physician found that impairment of the left upper extremity remained the same.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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