

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL V. PAIGE and DEPARTMENT OF DEFENSE,
MILITARY SEALIFT COMMAND, Bayonne, N.J.

*Docket No. 97-141; Submitted on the Record;
Issued August 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a three percent permanent impairment of his right hand for which he received a schedule award.

On July 20, 1987 appellant, then a 31-year-old ordinary seaman, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on July 18, 1987, while in the performance of duty, he sustained a right ring finger injury. On August 6, 1987 the Office of Workers' Compensation Programs accepted appellant's claim for fracture of the right ring finger.¹

On January 2, 1990 the Office received appellant's claim for a schedule award dated November 9, 1989. Appellant submitted a July 18, 1987 medical report noting that he had a crush injury to his right ring finger sustained that day. Appellant also submitted a November 24, 1989 medical report from a Veterans Administration staff physician, signature illegible, which noted: "amputation of dorsal end of distal end of phalanx."

On February 23, 1990 the Office referred the case file to an Office medical adviser with a statement of accepted facts for an opinion regarding appellant's entitlement to a schedule award. In a medical report dated February 26, 1990, the Office medical adviser stated that as a result of the amputation of the nail bed and tuft of appellant's right ring finger he was entitled to a two percent permanent impairment of the right hand. The Office thereafter awarded appellant a schedule award for a two percent permanent impairment for the right hand.

¹ In an August 24, 1987 medical report, Dr. William C. Oppenheim, a Board-certified orthopedic surgeon, who examined appellant after he returned to the employing establishment's headquarters, noted appellant's history of injury and reviewed his medical reports. He noted that appellant "apparently underwent a *** debridement, excision of the distal tuft of the bone from the right fourth finger" as a result of his July 18, 1987 employment-related injury.

On July 14, 1995 appellant filed a claim for an increased schedule award and submitted an undated medical report from a staff physician of the Veterans Administration, signature illegible, indicating that appellant's range of motion of the distal interphalangeal joint (DIP) of the ring finger, right side, was 50 degrees while the range of motion of the opposite side was 70 degrees. The staff physician stated that appellant had achieved maximum medical improvement and rated his impairment at "one percent of upper extremity, one percent for total body." An Office medical adviser reviewed the medical evidence on November 1, 1995 and noted that 20 degrees loss of flexion amounted to a 10 percent impairment of the right finger.²

In a decision dated December 11, 1995, the Office found that the medical evidence of record did not support an increase schedule award from the initial award of two percent of the hand.

On January 10, 1996 the Office received appellant's request for reconsideration of the December 11, 1995 decision. Appellant submitted a January 2, 1996 medical report, from Dr. Joe L. Gerald, a Board-certified orthopedic surgeon. He examined appellant on December 28, 1995 and noted an enlargement of the end of the right fourth finger with a longitudinal split in the fingernail and nail plate causing deformity of the nail with separation. Dr. Gerald noted that the distal interphalangeal joint exhibited a "10 percent permanent ... impairment of the right fourth finger secondary to loss of motion of the distal interphalangeal joint," with full range of motion in the proximal interphalangeal and metacarpophalangeal joints. He read an x-ray as revealing a loss of the distal third of the distal phalanx. He stated:

"Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, I feel he has [a] 20 percent impairment of the right fourth finger secondary to loss of the of the distal third of the distal phalanx which is essentially a partial amputation of the end of the finger. In addition, he has 10 percent permanent ... impairment of the right fourth finger secondary to loss of motion of the DIP. The 20 percent impairment would be combined with the 10 [percent] impairment to yield a total impairment of 28 percent of the fourth finger. This would correspond to a three percent permanent ... impairment of the right hand."

In a medical report dated July 1, 1996, an Office medical adviser stated that he had evaluated Dr. Gerald's findings with the A.M.A., *Guides* and stated that he agreed that appellant's loss of use of his right hand represented a three percent permanent impairment of the hand. He also noted that appellant had reached maximum medical improvement on December 28, 1995.

By decision dated July 29, 1996, the Office awarded appellant an additional one percent impairment for his right hand. This amounted to a three percent impairment, less the two percent previously paid.

² Figure 19, page 32, A.M.A., *Guides* (4th ed.)

The Board finds that appellant has no more than a three percent permanent impairment of the right hand for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.304 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner, in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

In this case, Dr. Joe Gerald, a Board-certified orthopedic surgeon, stated that he relied on the A.M.A., *Guides* to find that appellant had a three percent impairment of the right hand, a finding with which the Office medical adviser concurred.⁶ By applying the standards found in the A.M.A., *Guides*, (4th ed. 1993), the Board notes that Dr. Gerald's findings that a partial amputation of the distal end of a finger rates a 20 percent impairment is in accordance with Figure 17, page 30, of the *Guides*,⁷ and that a loss of 20 degrees of flexion in the distal interphalangeal joint of the ring finger rates a 10 percent impairment in accordance with Figure 19, page 32.⁸ Dr. Gerald combined the impairment to find a total 28 percent impairment of the ring finger. He also applied Table 1 at page 18 of the A.M.A., *Guides* to find that 28 percent impairment of the ring finger amounted to a 3 percent impairment of the hand.⁹ The Board finds that appellant has presented no other probative medical evidence to establish that his right hand impairment is greater than the three percent awarded.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.304.

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ The Office procedures direct the use of the fourth edition, issued in 1993, for schedule awards determined on and after November 1, 1993; see FECA Bulletins 94-4 (commencing use of the fourth edition); see also, Federal (FECA) Procedure Manual, Part 2 -- Medical, *Schedule Awards*, Chapter 3.700 exh. 4, 4 (October 1995).

⁷ A.M.A., *Guides*, 30, Figure 17.

⁸ *Id.* 32, Figure 19.

⁹ Table 1, page 18.

Consequently, the decision of the Office of Workers' Compensation Programs dated August 1, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 20, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member