

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

V.O., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Fresno, CA, Employer)

**Docket No. 08-746
Issued: July 16, 2008**

Appearances:

Zedie E. Ramage, Jr., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 15, 2008 appellant filed a timely appeal of a January 4, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative, denying her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant is entitled to a schedule award for her right thumb.

FACTUAL HISTORY

On November 22, 2004 appellant, then a 45-year-old mail processor, filed a traumatic injury claim alleging that on that date she sustained a deep cut on her right thumb while taking labels off a belt. She stopped work on the date of injury. Appellant returned to full-duty work on December 26, 2004. The Office accepted the claim for an open wound of the right thumb.

On May 13, 2005 appellant filed a claim for a schedule award. She submitted an August 2, 2005 medical report of Dr. John Fletcher, a family practitioner, who reviewed a

history of appellant's November 22, 2004 employment injury. Dr. Fletcher diagnosed right thumb laceration and indicated with an affirmative mark that this condition was caused by the accepted employment injury.

By letter dated August 2, 2005, the Office authorized appellant to undergo a medical examination by Dr. Murray P. Barry, an attending Board-certified internist, to determine the extent of any permanent impairment of her right thumb based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

In an August 3, 2005 report, Dr. Barry reviewed a history of the November 22, 2004 employment injury and appellant's medical treatment. Regarding her disability, he stated that there was no residual pain, discomfort or paresthesia in the right hand/thumb. There was no sensory loss and appellant indicated that there was no loss in range of motion. Dr. Barry stated that her only complaint was a cyst in the lateral flexor aspect of the right thumb, measuring 1.5 centimeters in the longest diameter. There was no drainage and the cyst was not tender. Appellant indicated that there was no loss of function as a result of her injury and that she had returned to the same job description without impairment. Dr. Barry stated that appellant sustained a right thumb laceration. He reported his range of motion measurements. The interphalangeal (IP) joint of appellant's right thumb had 90 degrees of flexion, the metacarpal phalangeal (MCP) joint had 61 degrees of flexion, the radial abduction had 50 degrees of motion, adduction was 8.5 centimeters and opposition was 8.4 centimeters. The distal interphalangeal (DIP) joint of the right index finger had 72 degrees of flexion, the proximal interphalangeal (PIP) joint had 98 degrees of flexion and the metaphalangeal (MP) joint had 93 degrees of flexion. The DIP joint of the right long finger had 70 degrees of flexion, the PIP joint had 100 degrees of flexion and the MP joint had 92 degrees of flexion. The DIP joint of the ring finger had 70 degrees of flexion, the PIP joint had 92 degrees of flexion and the MP joint had 90 degrees of flexion. The DIP joint of the right small finger had 70 degrees of flexion, the PIP joint had 92 degrees of flexion and the MP joint had 90 degrees of flexion. Dr. Barry found no muscle weakness or atrophy. He measured appellant's grip strength by Jamar with the fulcrum in the mid-position. Appellant had 45, 58 and 55 pounds of force on the right side and 40, 40, 48 pounds of force on the left side. Dr. Barry noted that appellant was right hand dominant. He opined that there were no additional factors for loss of function, which included ankylosis, triggering, soft tissue injury and arthritis/tendinitis. Dr. Barry concluded that the cyst in appellant's right thumb did not impact function although it was related to her original employment-related injury.

On October 5, 2005 Dr. Ellen Pichey, an Office medical adviser, reviewed the medical records, including Dr. Barry's report. She found no impairment due to loss of range of motion or strength, sensory deficit or pain based on the A.M.A., *Guides*. Dr. Pichey opined that appellant had no permanent impairment of the right hand. She stated that appellant reached maximum medical improvement on June 30, 2005.

By decision dated November 10, 2005, the Office denied appellant's claim for a schedule award based on the Office medical adviser's review of Dr. Barry's report and the other evidence of record.

In a letter dated December 6, 2005, appellant, through her representative, requested an oral hearing before an Office hearing representative.

At an October 18, 2006 hearing, appellant testified that Dr. Barry's report was different from his findings of loss of strength in her right hand and wrist which he made during the examination. Her representative argued that he did not utilize the A.M.A., *Guides* to determine the extent of appellant's permanent impairment. Appellant was allowed 30 days to submit a medical report from a physician regarding the extent of permanent impairment of her right thumb based on the A.M.A., *Guides*. She did not respond within the allotted time period.

By decision dated January 4, 2007, an Office hearing representative, affirmed the November 10, 2005 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.³ 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.⁴

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the protocols of the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. In such cases, the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.⁵

ANALYSIS

The Office accepted that appellant sustained an open wound of the right thumb. Appellant contends that she is entitled to a schedule award for permanent impairment to her right thumb. The weight of medical evidence, however, does not establish any permanent impairment of her right thumb.

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

⁵ *See Paul R. Evans*, 44 ECAB 646, 651 (1993); *see also John L. McClanic*, 48 ECAB 552 (1997).

Based on physical examination of appellant on August 3, 2005, Dr. Barry, an attending physician, found no residual pain, discomfort or paresthesia in the right hand/thumb. He also found no sensory loss and stated that appellant indicated that there was no loss in range of motion. Dr. Barry stated that appellant's only complaint was a cyst in the lateral flexor aspect of the right thumb, measuring 1.5 centimeters in the longest diameter. He noted that there was no drainage and the cyst was not tender. Dr. Barry opined that the cyst did not impact function although it was related to appellant's original employment injury. He stated that appellant sustained a right thumb laceration. Dr. Barry determined that the IP joint of her right thumb had 90 degrees of flexion, the MCP joint had 61 degrees of flexion, the radial abduction had 50 degrees of motion, adduction was 8.5 centimeters and opposition was 8.4 centimeters. He further determined that the DIP joint of the right index finger had 72 degrees of flexion, the PIP joint had 98 degrees of flexion and the MP joint had 93 degrees of flexion. Dr. Barry found that the DIP joint of the right long finger had 70 degrees of flexion, the PIP joint had 100 degrees of flexion and the MP joint had 92 degrees of flexion. He reported that the DIP joint of the ring finger had 70 degrees of flexion, the PIP joint had 92 degrees of flexion and the MP joint had 90 degrees of flexion. Dr. Barry further reported that the DIP joint of the right small finger had 70 degrees of flexion, the PIP joint had 92 degrees of flexion and the MP joint had 90 degrees of flexion. He found no muscle weakness or atrophy. Dr. Barry measured appellant's grip strength by Jamar with the fulcrum in the mid-position which resulted in 45, 58 and 55 pounds of force on the right side and 40, 40, 48 pounds of force on the left side. He stated that there were no additional factors for loss of function, which included ankylosis, triggering, soft tissue injury and arthritis/tendinitis. This report is insufficient to establish that she sustained any permanent impairment of the right thumb.

Dr. Pichey, an Office medical adviser, reviewed Dr. Barry's August 3, 2005 findings. Based on the A.M.A., *Guides*, she found no impairment due to loss of range of motion (A.M.A., *Guides* 456, 457, 459, 461, 463, 464, Figures 16-12, 16-15, 16-8a, 16-8b, 16-21, 16-23, 16-24, 16-25, respectively), strength or sensory deficit or pain. Dr. Pichey found no basis for an impairment rating for the right thumb under the A.M.A., *Guides*. Her opinion was based on the physical findings reported by Dr. Barry and referred to the appropriate tables of the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has not established any permanent impairment of her right thumb.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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