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

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| **T.L., Appellant** | ) | |
| **and** | ) | **Docket No. 10-1122** |
| | ) | **Issued: March 22, 2011** |
| **U.S. POSTAL SERVICE, POST OFFICE, Spokane, WA, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

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

### ***JURISDICTION***

On March 10, 2010 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated December 28, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

### ***ISSUE***

The issue is whether appellant has more than six percent permanent impairment to his right index finger.

### ***FACTUAL HISTORY***

Appellant, a 54-year-old mail carrier, was bitten by two pit bulls in his right and left hand while entering a house on July 15, 2008. He filed a claim for benefits, which the Office accepted for right hand laceration due to dog bite with tendon involvement.

On July 18, 2008 Dr. Bradley K. Coots, a Board-certified plastic surgeon, performed surgery to repair appellant's right index finger. He stated that appellant sustained a laceration in the dorsal section of his right index finger and a likely extensor tendon laceration, with a

significant amount of laceration to the interossei muscle from a dog bite. Dr. Coots detected damage to the extensor tendon but advised that he was unable to repair it. He found that appellant was not able to completely extend his right index finger and had approximately 20 to 25 percent degrees of extension lag. Appellant did not have any numbness in any of the fingers except over the proximal dorsum of the right index finger. Dr. Coots stated that appellant had full flexion and near full extension except for approximately 20 percent lag in the right index finger.

Dr. Coots advised appellant that he might have injured one of his interosseous muscles, or possibly partially the extensor tendon. He stated, however, that there was no guarantee that appellant would recover full extension of the affected areas.

On October 31, 2008 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right hand.

In a report dated June 30, 2009, Dr. William H. Shanks, Board-certified in orthopedic surgery and a treating physician, found that appellant had 24 percent impairment of the right hand, or 21 percent of the right arm based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. On examination appellant sustained a loss of range of motion due to loss of extension in his right index and ring fingers and a mild loss of extension of the ring finger. Dr. Shanks found a defect within the first dorsal interosseous muscle in the web space area from the dog bite. He calculated range of motion impairment for the right hand by utilizing the Upper Extremity Range of Motion Tables at Figure 15-13, page 462-63 of the A.M.A., *Guides*. Figure 15-13 outlines the method for calculating an impairment rating for the hand by measuring and totaling range of motion in each of the five digits. Dr. Shanks first rated the right thumb, noting 50 degrees flexion in the interphalangeal IP joint for a one percent impairment; 45 degrees flexion in the metacarpophalangeal (MCP) joint for a two percent impairment; and 45 degrees radial abduction for a one percent impairment in the carpometacarpal (CMC) joint. He combined the IP, MCP and CMC impairments for a total four percent digit impairment or one percent upper extremity impairment for the right thumb.

As to the right index finger, Dr. Shanks found 40 degrees flexion in the distal interphalangeal (DIP) joint of the right index finger, which yielded a 30 percent impairment for that finger; 90 degrees flexion in the proximal interphalangeal (PIP) joint of the right index finger, for a 10 percent impairment; a 10 degree lag in extension and a 10 percent impairment for loss of extension, which he subtracted from the 90 degrees of flexion to total an 80 degree combined loss of motion and a 20 percent (10 plus 10) combined flexion/extension impairment of the PIP joint. There was 45 degrees of flexion and 45 percent impairment in the MCP joint in the right index finger, plus a 20 degree lag in extension and 40 percent impairment for loss of extension. Dr. Shanks subtracted the 20 degrees deficit from the 45 degrees of flexion to produce 25 degrees of combined flexion/extension, and added the 45 percent impairment for flexion and the 40 percent extension for an 85 percent MCP impairment. He combined the DIP, PIP and MCP impairments to rate 5 percent digit impairment or 11 percent impairment to the right hand.

For the right middle finger, Dr. Shanks found 60 degrees flexion in the DIP joint, which yielded 10 percent impairment; 90 degrees of flexion in the PIP joint, for 10 percent impairment;

60 degrees flexion and zero degrees extension in the MCP joint, for a combined flexion/extension impairment of 50 percent. He combined the DIP and PIP impairments for a total 33 percent digital impairment or 7 percent right hand impairment. The right ring finger revealed 60 degrees flexion in the DIP joint, which yielded 10 percent impairment; 95 degrees flexion in the PIP joint for 5 percent digital impairment and a 10 degree lag in extension for 10 percent impairment. There was 60 degrees flexion and 30 percent impairment in the MCP joint in the right ring finger, plus a 15 degree lag and 35 percent impairment in extension. Dr. Shanks subtracted the 15 degrees deficit from the 60 degrees of flexion to produce 45 degrees of combined flexion/extension, and added the 30 percent impairment for flexion and the 35 percent extension for a 65 percent MCP impairment. He combined the DIP, PIP and MCP impairments for a total 36 percent digital impairment and 3 percent impairment to the right hand. The little finger exhibited 100 degrees flexion and a 5 degree lag in extension for two percent impairment in the PIP joint; 60 degrees flexion and 10 degrees flexion in the MCP joint. Dr. Shanks combined the PIP and MCP impairments for a total 25 percent digit impairment and 2 percent impairment to the right hand.

Dr. Shanks concluded:

> "I have completed the 'Upper Extremity Range of Motion Record' [pursuant to] the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition).... This is part of the grade modifier for the physical exam[ination]. The grade modifier for functional history would take into account his feeling of weakness in the right hand and the cold intolerance. He completed the 'Pain Disability Questionnaire' and appears to fall into Class I as a result of this. Taking the limitations of motion in the hand, which would probably account for the weakness he has, total for all digits 24 percent of the hand, which would convert to 21 percent of the upper extremity."

In a report dated August 4, 2009, Dr. Morley Slutsky, a specialist in occupational medicine and an Office medical adviser, found that appellant had a six percent impairment of his right arm based on loss of range of motion in the right index finger pursuant to the sixth edition of the A.M.A., *Guides*. In rating the range of motion impairment, the Office medical adviser stated that Dr. Shanks should have only presented ratings for the right index finger since this was the only digit affected by the work-related injury.

In an August 18, 2009 report, Dr. Shanks reviewed Dr. Slutsky's report and reiterated his previous findings and impairment ratings. He stated that he measured range of motion for all five fingers in his examination findings as directed by the A.M.A., *Guides* and that the Office's request for examination did not instruct him to make findings regarding the right index finger alone. Dr. Shanks noted that the injury to appellant's right index finger affected strength to the entire hand and involved the other fingers of the hand due to loss of strength.

On September 4, 2009 Dr. Slutsky reiterated that since only one digit was involved, appellant's impairment for the right index finger was six percent at the digit impairment level, not of the upper extremity. Although Dr. Shanks completed the upper extremity range of motion record at Figure 15-13 of the A.M.A., *Guides*, he did not document performing the range of motion measurements in compliance with section 15.7. The Office medical adviser did not

accept the ratings of Dr. Shanks since he did not provide any explanation of how the range of motion to the uninvolved fingers was affected by the accepted injury.

On September 8, 2009 the Office granted appellant a schedule award for a six percent permanent impairment of the right index finger for the period June 30 to July 19, 2009, for a total of 19.32 days of compensation.

On September 25, 2009 appellant requested a review of the written record.

By decision dated December 28, 2009, an Office hearing representative affirmed the September 8, 2009 decision.

## ***LEGAL PRECEDENT***

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] 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.[3] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[4]

## ***ANALYSIS***

The Board finds that a conflict in medical opinion exists between Dr. Shanks and Dr. Slutsky concerning the nature and the extent of permanent impairment caused by the accepted laceration injury.

Dr. Shanks rated 21 percent impairment to the right upper extremity pursuant to the sixth edition of the A.M.A., *Guides* based on range of motion impairments to all five digits of the right hand. This contrasted with the opinion of Dr. Slutsky, who found that in his August 4, 2009 report that appellant had six percent impairment to the right index finger alone, pursuant to Table 15-2 of the A.M.A., *Guides*.

The Board notes that Dr. Shanks examined appellant and based his 21 percent rating on range of motion measurements derived from all five digits pursuant to Upper Extremity Range of Motion tables at Figure 15-13, page 462-63 of the A.M.A., *Guides*. Dr. Shanks presented a

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404. Effective May 1, 2009, the Office began using the A.M.A., *Guides* (6th ed. 2009).

[3] *Id.*

[4] *Veronica Williams*, 56 ECAB 367, 370 (2005).

probative, well-supported method for calculating an impairment of the right hand and the right upper extremity, which was in conformance with the applicable protocols of the A.M.A., *Guides*. He asserted in his August 18, 2009 report that he measured range of motion for all five fingers in his examination findings as indicated by the A.M.A., *Guides* and that the injury to appellant's right index finger caused impairment to the entire hand. Dr. Shanks advised that appellant's surgery and his accepted condition involved the entire right hand, not merely the index finger. He examined appellant and he provided his calculations in accordance with Figure 15-13, the applicable section of the A.M.A., *Guides* for measuring upper extremity range of motion impairments.

Dr. Slutsky documented measurements and findings for each digit, but concluded that the injury only caused impairment to the right index finger. Therefore a conflict exists in the medical opinion evidence as to whether appellant's accepted injury caused impairment of the right index finger, or of the entire hand.

Accordingly, the Board set aside the December 28, 2009 Office decision and remands for referral of appellant, the case record and a statement of accepted facts to an appropriate independent medical specialist to determine the nature and the degree of appellant's permanent impairment to his accepted right hand laceration due to dog bite with tendon involvement. On remand, the Office should instruct the impartial medical specialist to resolve the conflict as to whether appellant had impairment of the right upper extremity or merely of the right index finger and to clearly indicate the specific background and protocols of the A.M.A., *Guides* upon which he based his opinion. After such further development of the record as it deems necessary, it shall issue a *de novo* decision.

## ***CONCLUSION***

The Board finds that the case is not in posture for decision. The case is remanded for further development of the medical evidence.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 28, 2009 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: March 22, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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