

Blankenship, Ellis

PERMANENT PARTIAL DISABILITY (RCW 51.32.080)

Amputation value

RCW 51.32.080 contemplates that the amputation of all fingers and the thumb is equivalent to the amputation of the hand at the wrist. An award for amputation value of two fingers therefore takes into account the relationship to loss of function of the hand and no additional award for "general loss of function" of the hand can be made. ...*In re Ellis Blankenship, BIA Dec., 30,210 (1970)*

Scroll down for order.

1 amputation value of the injured fingers as set forth in the statutory schedule, but also further
2 disability based upon general loss of function of the hand. It is the claimant's theory of the case
3 that the loss by amputation of portions of the little and ring finger of the left hand resulted in further
4 disability best measured by the diminished usefulness of the thumb and general loss of grip. In
5 support of this contention, the claimant presented medical testimony that this added disability is
6 best measured by reference to loss of function of the thumb. The claimant's medical testimony is
7 that the amount of this additional disability is equal in degree to 10 per cent of the loss of function of
8 the thumb at the metacarpophalangeal joint.
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13 The Department, on the other hand, contends on this appeal and in its exceptions to the
14 Proposed Decision and Order that the award made by the Department in its order of January 15,
15 1968, of the amputation value of the left ring finger at the middle joint and the amputation value of
16 the left little finger at the middle joint, is a proper computation of the claimant's disability and should
17 not be disturbed.
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21 Our careful review of the record convinces us that the Department's exceptions have merit
22 and its position in this matter must be sustained as a matter of law.
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24 The section of the statute with which we are here concerned is RCW 51.32.080. A study of
25 the schedule of awards for amputations involving the hand and arm reveals that each part of the
26 hand, each finger, has been assigned a value based upon the total value of the hand as a whole. It
27 is evident, from the fact that different values are assigned to different fingers, the greatest value
28 being assigned to the thumb, that when these awards are totaled, one has arrived at the same
29 award as that set forth in the statute for total loss of function of the hand by amputation. For
30 example, if one loses by amputation the index, middle, ring, and little fingers at the
31 metacarpophalangeal joint (total loss of each finger), the combination of awards for this (\$8,100.00)
32 is equal to the award one receives for loss by amputation of all fingers except the thumb at the
33 metacarpophalangeal joints (also \$8,100.00). If the thumb is also lost and one adds to the prior
34 award the award for loss of the thumb, (\$5,400.00) one arrives at the figure of \$13,500.00. This is
35 the amount set forth in the statute to be awarded for an amputation of the arm at any point below
36 the elbow joint distal to the insertion of the biceps tendon, which, in lay terms, is tantamount to
37 amputation just above the wrist. Thus, the statute contemplates that when all of the fingers and the
38 thumb have been lost from a hand, or any combination thereof, that this is tantamount to loss of
39 function suffered should the hand have been amputated at or slightly above the wrist.
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1 The Legislature, therefore, in setting forth the specified awards for loss by amputation,
2 included in that computation the respective value of that member with regard to the whole. For this
3 reason, testimony by the claimant's medical witness, Dr. Donald R. Brice, reveals that Dr. Brice was
4 unaware of this element of our statute. We note that Dr. Brice, an osteopath, never saw the
5 claimant and testified from x-rays and operative reports. It is evident from his testimony that he was
6 under the impression that the awards set forth in the statute for individual fingers did not
7 contemplate the relationship of the individual fingers to the overall function of the hand. It was from
8 this misunderstanding of the statutory schedule that Dr. Brice concluded that the "extrinsic" loss of
9 function (loss of function to the hand as a whole as opposed to loss of the function of the individual
10 parts thereof) was not included in the statutory scheme.

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12 Dr. Morris J. Dirstine, the attending hand surgeon, testified in support of the Department's
13 closing disability award.

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15 In the absence of a showing of specific loss of function in any other part of the hand than the
16 amputated fingers, we must conclude that the Departmental award was correct in fact and law.

17 **FINDINGS OF FACT**

18 Based on the record made at the hearings held in this matter, the Board finds:

- 19 1. On March 8, 1967, while in the course of his employment for the M. R.
20 Smith Shingle Company, the claimant herein, Ellis Blankenship, suffered
21 an industrial injury to his left ring and left little fingers. On March 16,
22 1967, the claimant filed a report of accident with the Department of
23 Labor and Industries. The claim was allowed, and on January 15, 1968,
24 the Department issued an order closing the claim and awarding the
25 claimant a permanent partial disability award of the amount allowed by
26 law for amputation of the left little finger at the proximal interphalangeal
27 joint and for amputation of the left ring finger at the proximal
28 interphalangeal joint. On February 15, 1968, the claimant filed a notice
29 of appeal with the Board of Industrial Insurance Appeals, and on March
30 8, 1968, this appeal was granted.
- 31 2. Appellate proceedings were conducted before the Board of Industrial
32 Insurance Appeals, and on July 3, 1969, a hearing examiner for this
33 Board entered a Proposed Decision and Order in connection with this
34 appeal. Thereafter, within the period of time provided by law,
35 exceptions were filed and the case referred to the Board for review as
36 provided by RCW 51.52.106.
- 37 3. The injury suffered by the claimant resulted from his left hand being
38 caught in a power saw. As a result thereof, he underwent three
39 surgeries. Ultimately, his left ring finger and little finger were amputated
40 at the level of the middle joint.

1 4. On January 15, 1968, the claimant had no disability resulting from his
2 industrial injury of March 8, 1967, of any kind other than that
3 represented by the amputation of his left ring and little finger at the
4 middle joint.

5 **CONCLUSIONS OF LAW**

6 Based on the foregoing findings of fact, the Board concludes:
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- 8 1. This Board has jurisdiction of the parties and the subject matter of this
9 appeal.
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11 2. The claimant is entitled, under the provisions of the Washington
12 Industrial Insurance Act, to the awards specified as "loss by amputation
13 of the left ring finger at the middle joint" and "amputation of the little
14 finger at the middle joint."
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16 3. The order of the Department of Labor and Industries issued herein on
17 January 15, 1968, is correct in fact and law and must be sustained.

18 It is so ORDERED.

19 Dated this 8th day of January, 1970.

20 BOARD OF INDUSTRIAL INSURANCE APPEALS

21 /s/
22 ROBERT C. WETHERHOLT Chairman

23 /s/
24 R.M. GILMORE Member
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28 Revised Code of Washington, Section 51.52.120(2) provides:

29 "If, on appeal to the board, the order, decision or award of the department is reversed or
30 modified and additional relief is granted to a workman or beneficiary, or in cases where a party
31 other than the workman or beneficiary is the appealing party and the workman's or beneficiary's
32 right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his
33 attorney in proceedings before the board if written application therefor is made by the attorney,
34 workman or beneficiary. In fixing the amount of such attorney's fee, the board shall take into
35 consideration the fee allowed, if any, by the director, for services before the department, and the
36 board may review the fee fixed by said director. Any attorney's fee set by the department or the
37 board may be reviewed by the superior court upon application of such attorney. Where the board,
38 pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or
39 receive any fee for services before the board in excess of that fee fixed by the board. Any person
40 who violates any provision of this section shall be guilty of a misdemeanor."
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