

## **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.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1     **IN RE: ELLIS BLANKENSHIP**             )     **DOCKET NO. 30,210**  
2   )  
3     **CLAIM NO. F-527241**                     )     **DECISION AND ORDER**  
4

5 APPEARANCES:

6  
7         Claimant, Ellis Blankenship, by  
8         Clarence Fidler, Counsel of Record, and  
9         Associate Counsel,  
10         Jager, Austin & Culver, per  
11         C. E. Austin and William J. Van Natter

12  
13         Employer, M. R. Smith Shingle Company,  
14         None  
15         (In attendance: William A. Hartley, Authorized Representative)

16  
17         Department of Labor and Industries, by  
18         The Attorney General, per  
19         Dinah Campbell and David K. Crossland, Assistants

20  
21         This is an appeal filed by the claimant on February 15, 1968, from an order of the  
22     Department of Labor and Industries dated January 15, 1968, which closed the claim with a  
23     permanent partial disability award of the amount allowed by law for the loss by amputation of the  
24     left ring finger at the proximal interphalangeal joint and the left little finger at the proximal  
25     interphalangeal joint. **SUSTAINED.**

26  
27  
28   **DECISION**

29  
30         This matter is before the Board for review and decision on a timely Statement of Exceptions  
31     filed by the Department of Labor and Industries to a Proposed Decision and Order issued by a  
32     hearing examiner for this Board on July 3, 1969, in which the order of the Department dated  
33     January 15, 1968, was reversed and this matter remanded to the Department with instruction to  
34     award the claimant an additional unspecified disability award of 10 per cent of the amputation value  
35     of the left thumb at the metacarpophalangeal joint.

36  
37         The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no  
38     prejudicial error was committed and said rulings are hereby affirmed.

39  
40         The issue presented by this appeal is the extent of the claimant's disability on January 15,  
41     1968, resulting from an industrial injury of March 8, 1967.

42  
43         The claimant contends on this appeal that amputations of his left little finger and left ring  
44     finger, at the middle joint, resulted in a degree of disability to be measured not only by the actual  
45  
46  
47

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.  
9

10  
11  
12  
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.  
18

19  
20  
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.  
23

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.  
40  
41  
42  
43  
44  
45  
46  
47

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.

11  
12 Dr. Morris J. Dirstine, the attending hand surgeon, testified in support of the Department's  
13 closing disability award.

14  
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:  
7

- 8 1. This Board has jurisdiction of the parties and the subject matter of this  
9 appeal.  
10  
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."  
15  
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  
25  
26  
27

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."  
41  
42  
43  
44  
45  
46  
47