

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

C.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Pittsburgh, PA, Employer)

**Docket No. 07-1013
Issued: October 1, 2007**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 21, 2007 which granted appellant a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than a 24 percent permanent impairment of the right index finger for which she has received schedule awards.

FACTUAL HISTORY

This is the second appeal in this case. In a November 20, 2006 decision, the Board set aside the Office's April 4, 2006 decision.¹ The Board determined that an Office medical adviser failed to consider a November 9, 2005 report from Dr. A. Lee Osterman, a Board-certified

¹ Docket No. 06-1341 (issued November 20, 2006).

orthopedic surgeon, which suggested that appellant had greater than nine percent permanent impairment of the right index finger.² The Board directed the Office to have the medical adviser review Dr. Osterman's November 9, 2005 report and clarify whether appellant had additional impairment. The facts of the case are set forth in the Board's prior decision and incorporated herein by reference.

As relevant to the present appeal, appellant submitted a report from Dr. Osterman dated December 1, 2004. Dr. Osterman opined that appellant's right index stenosing tenosynovitis was exacerbated by a recent injury in March 2004, when someone struck her right index finger. He provided range of motion findings for the right index finger of the metacarpophalangeal (MP) joint extension of 5 degrees represented a four percent impairment,³ MP joint flexion of -90 degrees represented a zero percent impairment,⁴ proximal interphalangeal (PIP) joint extension of 0 degrees and flexion of 120 degrees represented a zero percent impairment,⁵ distal interphalangeal (DIP) joint extension of 0 degrees represented a zero percent impairment,⁶ and -60 degrees of DIP joint flexion was a five percent digit impairment.⁷ Dr. Osterman noted reduced pinch strength and indicated that, although it was likely that appellant's condition would resolve, it required continued observation. He submitted a report dated November 9, 2005 and noted that appellant had no recent treatment and listed the following range of motion findings of the right index finger: the MP joint extension of 0 degrees for a 5 percent impairment,⁸ MP joint flexion of -80 degrees for a 6 percent impairment,⁹ PIP joint extension of 0 degrees for a 0 percent impairment,¹⁰ PIP joint flexion of -95 degrees for a 3 percent impairment,¹¹ DIP joint extension of 0 degrees for a 0 percent impairment,¹² DIP joint flexion of -45 degrees for a 13 percent impairment.¹³

On December 7, 2006 the Office referred Dr. Osterman's reports to an Office medical adviser. In a report dated December 9, 2006, the medical adviser noted that, in accordance with

² The Office accepted appellant's claim for right hand sprain and on April 4, 2006 granted appellant a schedule award for nine percent permanent impairment of the right index finger.

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* 464, Figure 16-25.

⁴ *Id.*

⁵ *Id.* at 463, Figure 16-23.

⁶ *Id.* at 461, Figure 16-21.

⁷ *Id.*

⁸ *Id.* at 464, Figure 16-25.

⁹ *Id.*

¹⁰ *Id.* at 463, Figure 16-23.

¹¹ *Id.*

¹² *Id.* at 461, Figure 16-21.

¹³ *Id.*

the fifth edition of the A.M.A., *Guides*,¹⁴ appellant sustained a nine percent permanent impairment of the right index finger. The medical adviser relied on Dr. Osterman's report dated December 1, 2004 and indicated that he did not use Dr. Osterman's November 9, 2005 range of motion values because these values produced a significantly greater index finger digit impairment rating than the report of December 1, 2004. He noted that the A.M.A., *Guides*, 16.4, page 450, provide that the examiner use active range of motion for the final impairment rating. The range of motion values provided in Dr. Osterman's report of December 1, 2004 compared to the report of November 9, 2005 represented the maximum active number of degrees traced between the two extreme position of flexion and extension of the right index finger joints. The medical adviser indicated that by using the best range of motion values he would capture appellant's maximal effort. He recommended that Dr. Osterman provide an explanation as to why the right index finger range of motion measurements were significantly worse on November 9, 2005 when compared to December 1, 2004.

In a letter dated January 3, 2007, the Office requested a supplemental report from Dr. Osterman addressing the December 9, 2006 report of the medical adviser.

In a report dated January 22, 2007, Dr. Osterman explained that the peri-capsular scar tissue resulting from appellant's sprain injury of January 2003 thickened over time and lead to further restriction of motion. By two years postinjury, appellant had reached maximum medical improvement in terms of deterioration due to the peri-capsular scar. Dr. Osterman opined that the difference in range of motion findings between the December 1, 2004 report and the November 9, 2005 report represented a progressive peri-capsular scar tissue which was maximally deteriorated.

In a February 5, 2007 report, the Office medical adviser noted that, in accordance with the A.M.A., *Guides*, appellant sustained a 24 percent permanent impairment of the right index finger. The medical adviser found that appellant reached maximum medical improvement on November 9, 2005. He advised that Dr. Osterman provided a reasonable explanation for why appellant's right index finger range of motion became worse after December 1, 2004. The medical adviser used the November 9, 2005 range of motion values to determine that appellant had a 24 percent permanent impairment of the right index finger.

In a decision dated February 21, 2007, the Office granted appellant a schedule award for 24 percent permanent impairment of the right index finger. As she previously received 9 percent impairment under the prior schedule award she was granted an additional award of 15 percent permanent impairment for the right index finger. The period of the award was from November 9 to December 27, 2005.

¹⁴ A.M.A., *Guides* (5th ed. 2001).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹⁵ and its implementing regulation¹⁶ 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 regulation as the appropriate standard for evaluating schedule losses.¹⁷

ANALYSIS

Appellant sustained injury to her right hand on January 2, 2003. She received a schedule award on April 4, 2006 for nine percent impairment of her right index finger. In the prior appeal, the Board remanded the case to the Office medical adviser for an explanation as to why he did not consider a November 9, 2005 report from Dr. Osterman which suggested that appellant sustained greater impairment.

The Office obtained additional medical evidence. In a January 22, 2007 report, Dr. Osterman explained that the difference between the range of motion findings in his December 1, 2004 report compared to the November 9, 2005 report was due to peri-capsular scar tissue which had thickened following surgery and resulted in further restriction of motion. By two years postinjury, appellant had reached maximum medical improvement in terms of deterioration due to peri-capsular scar tissue. The findings in the November 9, 2005 report represented progressive peri-capsular scar tissue which was maximally deteriorated.

The medical adviser reviewed Dr. Osterman's reports to rate impairment under the A.M.A., *Guides*. He advised that Dr. Osterman provided a reasonable explanation for why appellant's right index finger range of motion became worse from September 21, 2004 to November 9, 2005. Utilizing the November 9, 2005 range of motion values, the medical adviser properly calculated that range of motion findings of the right index finger were as follows: the MP joint extension of 0 degrees for 5 percent impairment,¹⁸ MP joint flexion of -80 degrees for 6 percent impairment,¹⁹ PIP joint extension of 0 degrees for 0 percent impairment,²⁰ PIP joint

¹⁵ 5 U.S.C. § 8107.

¹⁶ 20 C.F.R. § 10.404 (1999).

¹⁷ See *id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

¹⁸ A.M.A., *Guides* 464, Figure 16-25.

¹⁹ *Id.*

²⁰ *Id.* at 463, Figure 16-23.

flexion of -95 degrees for 3 percent impairment,²¹ DIP joint extension of 0 degrees for 0 percent impairment,²² DIP joint flexion of -45 degrees for 13 percent impairment.²³

The Board notes that, while that medical adviser properly calculated the range of motion findings for each component of the right index finger, he incorrectly determined that these findings combined for a 24 percent permanent impairment of the right index finger. The A.M.A., *Guides* direct that impairment be added for lost flexion and extension within a particular joint.²⁴ The A.M.A., *Guides* further provides that the examiner should then combine the impairments derived from separate joints to obtain the total finger impairment due to loss of motion using the Combined Values Chart, page 604 of the A.M.A., *Guides*. If all three joints are involved, the examiner must combine the resulting impairment value from the first two joints to the value of the third joint.²⁵

In this case, the motion impairment for the DIP joint was 13 percent (DIP joint flexion of 13 percent impairment), the motion impairment for the PIP joint was 3 percent (PIP joint flexion of 3 percent impairment) and the motion impairment for the MP joint was 11 percent (MP joint extension of 5 percent impairment added to MP joint flexion of 6 percent impairment). To calculate the total finger impairment due to loss of motion, the DIP joint impairment of 13 percent is combined with PIP joint impairment of 3 percent, using the Combined Values Chart, p. 604 of the A.M.A., *Guides*, which equals 16 percent; and the 16 percent is combined with MP joint impairment of 11 percent, which equals 25 percent total right index finger motion impairment.²⁶ The Board finds that, under the A.M.A., *Guides* appellant has no more than a 25 percent permanent impairment of the right index finger, one percent greater than that awarded by the Office.

CONCLUSION

The Board finds that appellant has no more than a 25 percent permanent impairment to her right index finger.

²¹ *Id.*

²² *Id.* at 461, Figure 16-21.

²³ *Id.*

²⁴ *See id.* at 16.4e Finger Motion Impairment.

²⁵ *See id.* at 465, Figure 16.4e Finger Motion Impairment, Combining Abnormal Motion at More Than One Finger Joint.

²⁶ *Id.* at 604, Combined Values Chart.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2007 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: October 1, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board