

aggravation and exacerbation of sesamoiditis of the right thumb. On August 22, 2007 the Office accepted right thumb strain. On November 30, 2007 Dr. Eduardo Gonzalez-Hernandez, a Board-certified orthopedic surgeon with a subspecialty in surgery of the hand, performed an exploration and repair for chronic laxity of the right thumb metacarpophalangeal joint on the ulnar collateral side, pinning of metacarpophalangeal joint and ulnar sesamoidectomy.

On June 15, 2008 appellant filed a claim for a schedule award. By letter dated November 24, 2008, the Office advised him of the medical evidence necessary to support a schedule award.

On July 10, 2008 Dr. Gonzalez-Hernandez noted that appellant was feeling stronger. There was a bump in the dorsoulnar aspect of appellant's reconstruction site that bothered him occasionally. Dr. Gonzalez-Hernandez noted that appellant's grip strength was 120 on the right and 140 on the left and that pinch strength was 14 and 25. He listed range of motion in the thumb interphalangeal joint as 0 to 80 degrees on the affected right side whereas the normal side was 0 to 95 degrees. Dr. Gonzalez-Hernandez noted that the thumb metacarpophalangeal joint flexion on the right side was 0 to 35 while 0 to 70 degrees on the left. He stated: "Following the Florida 1996 schedule, rating the percentage loss for the thumb, then converting that to hand impairment rating and then upper extremity impairment rating and finally total body impairment rating, the final is four percent total body...."

On February 2, 2009 the Office referred appellant to Dr. Peter Millheiser, a Board-certified orthopedic surgeon, for a second opinion. In a report dated February 26, 2009, Dr. Millheiser set forth findings on physical examination and review of appellant's medical history. He diagnosed a tear of the ulnar collateral ligament, right thumb. Dr. Millheiser noted that appellant's complaints were causally related to his injury, as well as "whatever type of injury he had in the past when he states that he dislocated the thumb." He found that appellant's work-related condition had resolved. On physical examination, Dr. Millheiser noted that appellant has flexion of the interphalangeal joint of the right thumb of 70 degrees and flexion of the metacarpophalangeal joint of 40 degrees. He noted that radial abduction and adduction were normal and that opposition is normal. Dr. Millheiser noted mild instability to valgus stress at the metacarpophalangeal joint of the thumb as well as hard swelling over the ulnar collateral ligament over the base of the proximal phalanx of the right thumb. He noted instability with varus stress and swelling over the medial aspect of the metacarpophalangeal joint. Dr. Millheiser also noted some mild weakness of pinch. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*), there was one percent impairment due to loss of flexion in the interphalangeal joint.¹ Dr. Millheiser rated three percent impairment of the metacarpophalangeal joint due to the loss of flexion, or one percent of the body.² He noted that there was some instability of the thumb at the metacarpophalangeal joint. Referencing an unspecified section of the A.M.A., *Guides*, Dr. Millheiser stated that this "equates to 1.2 percent of the hand, which is 1 percent of the upper extremity which is 1 percent of the body." He also noted some mild weakness in pinch, which he determined was two percent

¹A.M.A., *Guides* 456, Figure 16-12.

² *Id.* at 457, Figure 16-15. The Board notes 40 degrees of flexion amounts to two percent impairment of the metacarpophalangeal joint.

impairment of the body. Dr. Millheiser concluded that appellant had four percent impairment of the whole body based on the A.M.A., *Guides*.

On March 19, 2009 the Office asked an Office medical adviser to review the medical record and address permanent impairment to the right upper extremity. On April 2, 2009 the Office medical adviser agreed with Dr. Millheiser that appellant had four percent impairment of the right thumb.

On March 27, 2009 the Office granted a schedule award for four percent impairment of the right thumb.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.⁷

ANALYSIS

The Office accepted appellant's claim for temporary aggravation and exacerbation of sesamoiditis of the right thumb and for right thumb strain.

Dr. Gonzalez-Hernandez advised that appellant had a four percent impairment of the whole body. The Board notes that the Act does not provide schedule awards for permanent impairment of the whole person or body as a whole.⁸ Dr. Gonzalez-Hernandez did not properly

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ *Id.*

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

⁸ See *B.M.*, 61 ECAB ____ (Docket No. 09-2231, issued May 14, 2010); *D.J.*, 59 ECAB ____ (Docket No. 08-725, issued July 9, 2008).

apply the A.M.A., *Guides* in making his impairment rating; rather he applied a 1996 Florida schedule in reaching his conclusion.⁹ Therefore, his rating is of diminished probative value in determining the degree of permanent impairment to appellant's right thumb.

The Office referred appellant to Dr. Millheiser for a second opinion. Dr. Millheiser also found that appellant had four percent impairment of the body as a whole pursuant to the A.M.A., *Guides*. He allowed one percent of the body for impairment at the metacarpophalangeal joint due to loss of flexion, one percent of the body for instability of the thumb at the metacarpophalangeal joint and two percent impairment to the body for mild weakness to pinch. As noted, the Act does not provide schedule awards for permanent impairment of the whole person.¹⁰ Dr. Millheiser did not adequately explain how he applied the A.M.A., *Guides* to rate impairment or otherwise explain how he calculated impairment.¹¹ Accordingly, he did not provide sufficient opinion with regard to appellant's permanent impairment. The Office medical adviser merely stated that he agreed with Dr. Millheiser. He did not adequately address the deficiencies in the medical reports of record or make reference to the A.M.A., *Guides*.

The medical evidence of record does not adequately address the nature or extent of impairment caused by appellant's accepted injury. On remand, the Office should further develop the medical evidence with regard to appellant's impairment that conforms to the A.M.A., *Guides*. Following such other further development as deemed necessary, the Office shall issue an appropriate decision on appellant's schedule award claim.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁹ See 20 C.F.R. § 10.404(a).

¹⁰ See *D.J.*, *supra* note 8.

¹¹ See *Tonya D. Bell*, 43 ECAB 845 (1992) (where the Board held that an opinion is of diminished probative value where the physician does not explain how he derived such an impairment rating or whether it was ascertained by using the appropriate standards of the A.M.A., *Guides*).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further proceedings consistent with this decision.

Issued: July 14, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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