

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, NEW TOWNE
POST OFFICE, Rockford, IL, Employer**

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**Docket No. 11-73
Issued: August 22, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2010 appellant filed an appeal of a September 23, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying a claimed period of disability and a September 28, 2010 decision denying his claim for an increased schedule award. Pursuant to the Federal Employees' Compensation Act (FECA),¹ 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability commencing May 10, 2010 after the employing establishment reduced his work schedule from eight to four hours a day; and (2) whether appellant sustained more than a 14 percent permanent impairment of the left upper extremity, for which he received a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that, on or before March 9, 2005, appellant, then a 49-year-old letter carrier, sustained an interphalangeal sprain/strain and aggravation of carpometacarpal arthritis of the left thumb due to repetitive grasping in the performance of duty. In 1976 while in military service, he sustained a shrapnel wound to his left hand and underwent an attempted carpometacarpal fusion of the left thumb, which proved unsuccessful.

Dr. Ryan Kehoe, an attending Board-certified orthopedic surgeon, performed a carpometacarpal arthroplasty, distraction arthroplasty, trapeziectomy and partial trapezoidectomy on August 3, 2005, with fixation pin removal on September 13, 2005. OWCP approved the procedure.

Appellant was off work from August 3 to November 11, 2005. He returned to work with restrictions on November 13, 2005. Appellant received compensation for intermittent absences through February 2006.²

On March 20, 2006 appellant claimed a schedule award. As his physician advised that he did not perform impairment ratings,³ OWCP obtained a second opinion from Dr. John DeBush, a Board-certified orthopedic surgeon. A statement of accepted facts and the medical record were provided for his review.

In a June 27, 2006 report, Dr. DeBush reviewed the statement of accepted facts. On examination he found radial abduction of the left thumb limited to 25 degrees and that appellant could not extend his left thumb to within 1.5 cm of his little finger. Dr. DeBush also observed significantly diminished pinch and grip strength due to the August 3, 2005 surgery. He diagnosed pantrapezial and carpometacarpal arthritis of the left thumb, aggravated by repetitive left hand motion at work. Dr. DeBush noted that appellant had reached maximum medical improvement. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A., *Guides*"), he found a 20 percent impairment of the left thumb due to loss of radial abduction and adduction, according to Table 16-8a, Table 16-8b and Figure 16-18, page 459.⁴ Dr. DeBush also found a 30 percent

² By decision dated July 31, 2006, OWCP denied appellant's claim for brief work absences on April 28, May 25 and June 20, 2006 on the grounds that he submitted insufficient evidence. No appeal was sought from this decision.

³ Appellant submitted a May 23, 2006 report with an illegible signature. This report cannot be considered as probative medical evidence as it cannot be verified that it was authored or reviewed by a physician. *Merton J. Sills*, 39 ECAB 572 (1988).

⁴ Figure 16-18, page 459 of the fifth edition of the A.M.A., *Guides* is entitled "Linear Measurement of Thumb Adduction in Centimeters at Various Positions and Motion Unit Impairment Curve for Lack of Adduction." Table 16-8a is entitled "Thumb Impairment Values Due to Lack of Radial Abduction and Ankylosis." Table 16-8b is entitled "Thumb Impairment Values Due to Lack of Radial Adduction and Ankylosis."

impairment of the left upper extremity due to loss of pinch and grip strength, according to Table 16-34, page 509.⁵

In a July 27, 2006 report, OWCP's medical adviser reviewed Dr. DeBush's report and concurred that appellant reached maximum medical improvement. He found a seven percent impairment of the left thumb due to limitation of radial abduction to 25 degrees and a one percent impairment of the left thumb due to 1.5 cm adduction, according to Table 16-8a. The medical adviser found that a total eight percent impairment of the left thumb equaled a three percent impairment of the left upper extremity according to Table 16-1, page 438 and Table 16-2, page 439.⁶ He also found an 11 percent impairment of the left upper extremity due to the carpometacarpal resection arthroplasty, according to Table 16-27, page 506.⁷ Using the Combined Values Chart on page 604, the medical adviser found that the 3 and 11 impairments equaled a 14 percent impairment of the left upper extremity.

By decision dated August 15, 2006, OWCP granted appellant a schedule award for a 14 percent impairment of the left upper extremity.

In a September 5, 2006 letter, appellant requested an oral hearing, held February 13, 2007. At the hearing, he described difficulties with personal and work activities due to diminished pinch and grip strength in the left hand.

By decision dated and finalized April 30, 2007, OWCP's hearing representative affirmed the August 15, 2006 schedule award determination, finding that the medical adviser's report was entitled to the weight of the medical evidence.

From September 2007 to April 2010, appellant performed a series of modified duty letter carrier positions, working eight hours a day with restrictions. In a September 22, 2009 duty status report (Form CA-17), Dr. A. Conrad, an attending orthopedic surgeon, found appellant able to work full time with no pinching or gripping with the left hand and lifting limited to five pounds with the left arm.

On April 21, 2010 appellant accepted a job offer as a modified city carrier, working four hours a day, with lifting limited to five pounds and no gripping or pinching with the left hand. The assignment was to begin on June 5, 2010.

On May 21, 2010 appellant filed a claim for wage-loss compensation (Form CA-7) for four hours a day for the period May 8 to 21, 2010. On the reverse of the form, the employing establishment indicated that his four-hour assignment was made under the National

⁵ Table 16-34, page 509 of the fifth edition of the A.M.A., *Guides* is entitled "Upper Extremity Joint Impairment Due to Loss of Grip or Pinch Strength." A 30 percent impairment corresponds to a 61 to 100 percent loss of strength.

⁶ Table 16-1, page 438 of the fifth edition of the A.M.A., *Guides* is entitled "Conversion of Impairment of the Digits to Impairment of the Hand." Table 16-2, page 439 is entitled "Conversion of Impairment of the Hand to Impairment of the Upper Extremity."

⁷ Table 16-27, page 506 of the fifth edition of the A.M.A., *Guides* is entitled "Impairment of the Upper Extremity After Arthroplasty of Specific Bones or Joints."

Reassessment Process. An accompanying time analysis form (CA-7a) shows that, from May 10 to 21, 2010, appellant worked four hours a day and used four hours of leave without pay. The employing establishment noted “can only find four h[ou]rs work.”

In a June 3, 2010 letter, OWCP requested that the employing establishment clarify the circumstances of appellant’s job change, including whether his full-time light-duty position was withdrawn as part of the National Reassessment Process. It requested that the employing establishment provide this information within 30 days. The employing establishment did not respond.

In a June 3 and August 5, 2010 letters, OWCP advised appellant of the evidence needed to establish his claim for wage-loss compensation, including a narrative medical report supporting a change in the nature and extent of his injury-related conditions such that he could no longer perform his light-duty job. Appellant did not submit additional medical evidence.

On July 1, 2010 appellant claimed an additional schedule award. In a July 12, 2010 letter, OWCP advised appellant to submit an impairment evaluation from his attending physician, referencing the sixth edition of the A.M.A., *Guides*, in effect as of May 1, 2009. Appellant did not submit additional medical evidence.

By decision dated September 23, 2010, OWCP denied appellant’s claim for compensation on and after May 10, 2010 on the grounds that appellant did not submit any medical evidence establishing a worsening of his accepted condition such that he was disabled for work as claimed.

By decision dated September 28, 2010, OWCP denied appellant’s claim for an additional schedule award on the grounds that he did not submit the requested impairment rating from his physician.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment, which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employees physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁸

⁸ 20 C.F.R. § 10.5(x). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained an interphalangeal sprain/strain and aggravation of carpometacarpal arthritis of the left thumb. Appellant underwent distraction arthroplasty, trapeziectomy and partial trapezoidectomy. He performed full-time modified-duty positions from November 2005 through April 2010.

On May 21, 2010 appellant claimed wage-loss compensation for four hours a day for the period May 8 to 21, 2010, after the employing establishment reduced his work hours from eight to four a day. On June 3, 2010 OWCP requested that the employing establishment clarify whether appellant's full-time modified work was withdrawn under the National Reassessment Program. The employing establishment did not respond. OWCP issued a September 23, 2010 decision finding that appellant had not sustained a recurrence of disability. The Board finds, however, that this issue requires further development.

It is well established that complete withdrawal of a modified-duty assignment specially designed to accommodate an employee's work restrictions may constitute a recurrence of disability, if that withdrawal was not due to misconduct, nonperformance of duty or a reduction-in-force.⁹ The evidence establishes that appellant was working full time prior to May 10, 2010, then for four hours a day commencing May 10, 2010. The reasons for that change are not evident from the record. It is not clear if appellant accepted a reduced work schedule, if the employing establishment withdrew appellant's full-time modified position, or if the National Reassessment Process effected a reduction-in-force. Without this information, the Board cannot determine if appellant sustained a recurrence of disability entitling him to wage-loss compensation for the claimed period. The case will be returned to OWCP for appropriate development of these issues, including obtaining a statement of clarification from the employing establishment. Following this and any other development deemed necessary, OWCP will issue an appropriate merit decision in the case.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provisions of FECA¹⁰ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluation of scheduled losses and the Board has concurred

⁹ A.N., Docket No. 10-1830 (issued June 14, 2011); 5 U.S.C. § 8107.

¹⁰ 5 U.S.C. §§ 8101-8193.

in such adoption.¹¹ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.¹²

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹³ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).¹⁴ The net adjustment formula is (GMFH-CDX) + (GMPE - DCX) + (GMCS- CDX).

ANALYSIS -- ISSUE 2

OWCP based its August 15, 2006 schedule award on the July 27, 2006 clinical findings of Dr. DeBush, a Board-certified orthopedic surgeon and second opinion physician, as interpreted by OWCP's medical adviser. The medical adviser applied the appropriate portions of the sixth edition of the A.M.A., *Guides* to Dr. DeBush's clinical findings. He opined that appellant had a 14 percent impairment of the left upper extremity. Appellant disagreed, and requested an oral hearing at which he presented no additional medical evidence. By April 30, 2007 decision, OWCP's hearing representative affirmed the August 15, 2006 schedule award determination.

On July 1, 2010 appellant claimed an additional schedule award. OWCP advised him by July 12, 2010 letter to submit a current impairment evaluation from his physician utilizing the sixth edition of the A.M.A., *Guides*. However, appellant did not submit such evidence. The only medical evidence of record dated after the August 15, 2006 schedule award determination is a September 22, 2009 form report from Dr. Conrad, an attending orthopedist, who noted work restrictions. Dr. Conrad did not provide an impairment rating or otherwise address the schedule award issue.

Appellant submitted no additional medical evidence indicating a greater percentage of impairment than the 14 percent previously awarded. He has not established entitlement to an augmented schedule award. Therefore, OWCP's September 28, 2010 decision is proper under the law and facts of this case.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

¹¹ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹³ A.M.A., *Guides* (6th ed. 2008), page 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹⁴ A.M.A., *Guides* (6th ed. 2008), pp. 494-531.

CONCLUSION

The Board finds that the case is not in posture for a decision regarding whether appellant is entitled to wage-loss compensation commencing May 10, 2010. The Board further finds that appellant has not established that he sustained more than a 14 percent permanent impairment of the left upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2010 schedule award decision of the Office of Workers' Compensation Programs is affirmed. The September 23, 2010 decision regarding the claimed period of disability is set aside, and the case is remanded to OWCP for further development consistent with this decision and order.

Issued: August 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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