

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

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W.M, Appellant)	
)	
and)	Docket No. 10-2247
)	Issued: July 18, 2011
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
Kansas City, MO, Employer)	
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<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Appellant, pro se,</i>	
<i>Office of Solicitor, for the Director,</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 30, 2010 appellant filed a timely appeal from the August 26, 2010 Office of Workers' Compensation Programs (OWCP) schedule award decision. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a 25 percent permanent impairment of his right middle finger.

FACTUAL HISTORY

On July 12, 2008 appellant, then a 70-year-old plumber/journey man pipefitter, filed a traumatic injury claim alleging that he sustained a contusion to his right hand in the performance

¹ 5 U.S.C. § 8101 *et seq.*

of duty on October 25, 2000.² On August 29, 2008 OWCP accepted his claim for contusion of right hand between third and fourth metacarpals. On January 28, 2009 OWCP expanded the claim to include post-traumatic arthritis of the metacarpal joint of the right long finger. Appellant received appropriate compensation benefits.

Appellant and the employing establishment submitted medical records noting treatment of his right hand and middle finger since October 25, 2000.

On April 1, 2009 OWCP received appellant's claim for a schedule award. In a letter dated April 3, 2009, it requested that he provide an impairment rating from his treating physician utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (hereinafter) (6th ed. 2008). On April 27, 2009 appellant requested that OWCP arrange for an evaluation of his right hand.

In a June 7, 2009 report, OWCP's medical adviser noted appellant's history of injury and treatment and utilized the A.M.A., *Guides*. He referred to Table 15-3³ and determined that the rating for a wrist contusion or crush injury with healed minor soft tissue or skin injury with no significant symptoms or signs at maximum medical improvement was equal to zero percent. OWCP's medical adviser explained that appellant did not have ratable impairment for this condition. Additionally, he explained that a rating for osteoarthritis according to Table 15-2,⁴ the Digit Regional Grid would result in a 25 percent impairment of the digit. The medical adviser noted that for metacarpophalangeal (MCP) dislocation or sprain from class 2 for greater than 20 degrees instability as the default value, as well as the D and E levels was 25 percent of the digit. He further noted that the *QuickDash* method would not apply to digits.⁵ OWCP's medical adviser opined that appellant had a 25 percent permanent impairment of the right long middle finger.

In an August 24, 2009 decision, OWCP granted appellant a schedule award for 25 percent permanent impairment of the right middle finger. The award covered a period of 7.5 weeks from October 19 to December 10, 2007.

On February 5, 2010 Dr. Brian Duncan, a Board-certified surgeon, performed an authorized right middle finger MCP silastic arthroplasty.

On May 21, 2010 appellant contacted OWCP and requested an increased schedule award. In a letter of the same date, OWCP advised him that additional evidence of impairment was required to support his claim for an increased award.

² The record also contains a July 1, 2002 occupational disease claim for right hand contusion that was first noted on May 15, 2000.

³ A.M.A., *Guides* 395.

⁴ *Id.* at 393.

⁵ *Id.* at 482.

In a June 23, 2010 report, Dr. Duncan examined appellant's right hand and determined his wound was healed, there was no erythema or signs of infection. He advised that appellant had approximately 60 degrees of flexion.

In an August 22, 2010 report, OWCP's medical adviser noted appellant's history of injury and treatment and utilized the A.M.A., *Guides*. He noted appellant's February 5, 2010 surgery and noted Dr. Duncan's postsurgical finding of range of motion was from full extension to approximately 60 degrees of flexion. The medical adviser referred to Table 15-2⁶ and found class 2 for arthroplasty of the MCP joint with residual symptoms, consistent objective findings, functional loss with normal motion, the impairment rating can range from 16 to 24 percent with the default value being 20 percent. He explained that appellant's range of motion was reported to be from full extension to approximately 60 degrees of full flexion. The medical adviser noted that according to Table 15-31,⁷ the impairment rating for flexion was equal to 19 percent of the digit and the impairment rating for full extension would be 0 percent. OWCP's medical adviser explained the default value would be equal to 20 percent of the digits. He advised that if the grade E value, 24 percent, under Table 15-2 was taken into consideration, it would be less than the 25 percent right middle finger schedule award that appellant received on June 7, 2009. Additionally, the medical adviser noted that the previous schedule award exceeded the impairment rating that could be processed for the MCP finger arthrodesis or for the range of motion limitation demonstrated in the June 23, 2010 report. He opined that the current impairment could not exceed 24 percent. Appellant's impairment rating did not exceed the previous schedule award. The medical adviser concluded that no additional impairment was warranted.

By decision dated August 26, 2010, OWCP denied appellant's claim for an additional schedule award. It found that the medical evidence did not support an increase in impairment already compensated.

LEGAL PRECEDENT

The schedule award provision of FECA⁸ and its implementing federal regulations,⁹ 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, FECA 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 for all claimants, OWCP has adopted

⁶ *Id.* at 394.

⁷ *Id.* at 470.

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404.

the A.M.A., *Guides* as the uniform standard applicable to all claimants.¹⁰ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹¹

The sixth edition requires identifying 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).¹² The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹³

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.¹⁴

ANALYSIS

OWCP accepted that appellant sustained a contusion of the right hand between third and fourth metacarpals. On January 28, 2009 it expanded the claim to include post-traumatic arthritis of the metacarpal joint of the right long finger. In an August 24, 2009 decision, OWCP granted appellant a schedule award for 25 percent permanent impairment of the right middle finger. On February 5 2010 appellant underwent a right middle finger MCP silastic arthroplasty. He subsequently claimed entitlement to increased schedule award compensation.

OWCP received the June 23, 2010 report of Dr. Duncan. However, Dr. Duncan merely determined that appellant's wound had healed and provided range of motion findings. He did not provide a recommendation with regard to appellant's permanent impairment under the A.M.A., *Guides*. It is well established that, when the examining physician does not provide an estimate of impairment conforming to the proper edition of the A.M.A., *Guides*, OWCP may rely on the impairment rating provided by OWCP's medical adviser.¹⁵

OWCP's medical adviser reviewed Dr. Duncan's report and rated appellant's impairment to determine the highest rating possible. If more than one diagnosis can be used, the highest causally related impairment should be used.¹⁶ For example, Dr. Duncan referred to Table 15-31 of the sixth edition of the A.M.A., *Guides* for finger range of motion.¹⁷ He determined that range

¹⁰ *Id.* at § 10.404(a).

¹¹ 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).

¹² A.M.A., *Guides* at 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

¹³ *Id.* at 521.

¹⁴ *See* Federal (FECA) Procedure Manual, *supra* note 11 at Chapter 2.808.6(d) (August 2002).

¹⁵ *See J.Q.*, 59 ECAB 366 (2008).

¹⁶ A.M.A., *Guides* 389.

¹⁷ *Id.* at 470.

of motion for flexion was from full extension to 60 degrees, which correlated to 19 percent of the digit and 0 percent full extension.

Dr. Duncan properly referred to Table 15-2 for the arthroplasty of the MCP joint and determined that for a class 2 arthroplasty of the MCP joint with residual symptoms, consistent objective findings, functional loss with normal motion, the impairment rating ranged from 16 to 24 percent with the default value being 20 percent.¹⁸ OWCP's medical adviser properly explained that even if the highest value, the grade E value, were utilized, it would be less than the 25 percent right middle finger schedule award that appellant received on June 7, 2009. Thus, he opined that the current entitlement to an award could not exceed 24 percent. OWCP's medical adviser opined that no additional impairment was warranted.

The Board finds that OWCP's medical adviser's August 22, 2010 report correctly applies Dr. Duncan's findings to the A.M.A., *Guides* and establishes with a through explanation, that appellant has no more than a 25 percent permanent impairment of the right middle finger under the sixth edition of the A.M.A., *Guides*. There is no other medical evidence of record supporting any greater impairment pursuant to the A.M.A., *Guides*.

On appeal, appellant contends that the injury has made it harder to perform his duties as a journeyman pipe fitter. The Board notes that the evidence does not currently support entitlement to a greater award. Furthermore, factors such as employability or limitations on daily activities have no bearing on the calculation of impairment.¹⁹

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he has more than a 25 percent permanent impairment of his right middle finger.

¹⁸ *Id.* at 394.

¹⁹ *J.H.*, Docket No. 08-2432 (issued June 15, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 26, 2010 is affirmed.

Issued: July 18, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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