

injury, open fracture of the distal phalanx of the right middle finger and a shortening and primary closure of the finger. Appellant underwent surgery on September 20, 2001 for amputation of the distal joint of his right middle finger.

Appellant subsequently filed a claim for a schedule award.

In a February 12, 2002 report, Dr. Abdul Foad stated that appellant had reached maximum medical improvement and had a 45 percent impairment of the right middle finger, a 9 percent impairment of the hand and an 8 percent impairment of the right upper extremity according to the American Medical Association, *Guides to the Evaluation of Permanent Improvement* (A.M.A., *Guides*) (4th ed. 1995).

In memoranda dated February 5 and 6, 2003, the Office district medical director noted that Dr. Foad's report could not be used to determine appellant's impairment because he did not use the applicable fifth edition of the A.M.A., *Guides* and did not provide sufficient physical findings.

On February 10, 2003 the Office referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. Arthur B. Searle, a Board-certified physiatrist, for an evaluation of his employment-related impairment to his right middle finger.

In a report dated March 11, 2003, Dr. Searle indicated that maximum medical improvement occurred as of December 2001, when appellant returned to regular duty and the edema in his right hand had resolved. He indicated that appellant had a 9 percent impairment of the right hand according to Figure 16-3 at page 442 of the fifth edition of the A.M.A., *Guides* due to amputation of the distal interphalangeal (DIP) portion of his right middle finger, which translated to an 8 percent impairment of the right upper extremity.

The Office district medical director asked Dr. Searle to provide range of motion measurements of appellant's right middle finger and provide an impairment rating for the finger, rather than the hand and upper extremity.

In a May 27, 2003 report, Dr. Searle indicated that the range of motion of appellant's right middle finger was 25 degrees of extension and 90 degrees of flexion for the metacarpal phalangeal (MP) joint and 0 degrees of extension and 90 degrees of flexion of the proximal interphalangeal (PIP) joint.

In a report dated July 12, 2003, the Office district medical director applied the findings of Dr. Searle to the fifth edition of the A.M.A., *Guides* and determined that appellant had a 48 percent impairment of the right middle finger based on a 45 percent impairment for amputation of the DIP joint according to Figure 16-3 at page 442 of the A.M.A., *Guides* and a 6 percent impairment based on decreased flexion of the PIP joint (90 degrees) according to Figure 16-23 at page 463. He indicated that appellant had a 48 percent impairment of the right middle finger according to the Combined Values Chart at page 604.

By decision dated July 29, 2003, the Office granted appellant a schedule award for a 48 percent impairment of the right middle finger, for 14.4 weeks.

By letter dated November 3, 2003, appellant requested reconsideration and argued that his schedule award was not correct because a coworker with a similar injury received greater compensation.

By decision dated December 18, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence he submitted did not constitute new and relevant evidence not previously considered by the Office.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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.³

Section 8107(c)(7) of the Act provides that for total or 100 percent loss of use of the second (middle) finger an employee is entitled to 30 weeks of compensation⁴ and section 8107(c)(3) provides that for total or 100 percent loss of use of the hand an employee is entitled to 244 weeks of compensation.⁵ Section 8107(c)(19) provides that compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member.⁶

ANALYSIS -- ISSUE 1

In reports dated March 11 and May 27, 2003, Dr. Searle provided findings on examination of appellant's right middle finger that included range of motion of 25 degrees of extension and 90 degrees of flexion for the MP joint and 0 degrees of extension and 90 degrees of flexion of the PIP joint. He indicated that appellant had a 9 percent impairment of the right hand according to Figure 16-3 at page 442 of the fifth edition of the A.M.A., *Guides* due to amputation of the DIP portion of his right middle finger.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Id.*

⁴ 5 U.S.C. § 8107(c)(7).

⁵ 5 U.S.C. § 8107(c)(3).

⁶ 5 U.S.C. § 8107(c)(19).

In a report dated July 12, 2003, the Office medical director applied the findings of Dr. Searle to the fifth edition of the A.M.A., *Guides* and determined that appellant had a 45 percent impairment for amputation of the DIP joint according to Figure 16-3 at page 442 of the A.M.A., *Guides* and a 6 percent impairment based on decreased flexion of the PIP joint according to Figure 16-23 at page 463. He found that appellant had a 48 percent impairment of the right middle finger according to the Combined Values Chart at page 604 of the A.M.A., *Guides*. However, where the residuals of an injury to a member of the body specified in the schedule award provision of the Act extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.⁷ The Office did not consider whether appellant was entitled to a schedule award based on the loss of use of the larger member, his right hand, despite the fact that Dr. Searle had indicated in his March 11, 2003 report that appellant had a nine percent impairment of the right hand due to his right middle finger DIP joint amputation.⁸ The Office district medical director determined that appellant had a 48 percent impairment of the right middle finger without addressing Dr. Searle's conclusion that appellant's right middle finger impairment, subsequent to the amputation surgery, equated to a 9 percent impairment to the right hand.

Accordingly, the case must be remanded so that the Office can consider Dr. Searle's March 11 and May 27, 2003 reports to determine whether the impairment in appellant's right finger resulting from his September 20, 2001 employment injury extended into his right hand, resulting in an impairment of the right hand. After such further development of the medical evidence as the Office deems necessary, the Office shall issue a *de novo* decision.⁹

CONCLUSION

The Board finds that this case is not in posture for a decision and must be remanded for further development as explained above.

⁷ *Charles B. Carey*, 49 ECAB 528 (1998); *Tonya D. Bell*, 43 ECAB 845 (1992); *Ronald M. Klar*, 31 ECAB 136 (1979).

⁸ Under 5 U.S.C. § 8107, the maximum number of weeks of compensation for the second finger is 30; for the hand, the maximum number of weeks is 244.

⁹ In light of the Board's resolution of the first issue, the second issue in this case is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 18 and July 29, 2003 are set aside and the case is remanded for further action consistent with this decision.

Issued: June 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member