

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

MONICKA OLDEN, Appellant

and

**U.S. POSTAL SERVICE, EDGEMOOR POST
OFFICE, Wilmington, DE, Employer**

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**Docket No. 05-761
Issued: August 3, 2005**

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

COLLEEN DUFFY KIKO, Judge

DAVID S. GERSON, Judge

JURISDICTION

On February 10, 2005 appellant filed an appeal from a decision of the Office of Workers' Compensation Programs dated October 26, 2004, affirming a November 10, 2003 schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has established that she sustained more than a 38 percent impairment of the right thumb, for which she received a schedule award. On appeal, appellant contends that the August 11, 2003 opinion of Dr. Draper, a Board-certified orthopedic surgeon and second opinion physician, was insufficient as he did not include measurements for grip strength, observations regarding any neurologic deficits and did not include his right thumb arthrodesis and fusion in calculating the percentage of permanent impairment. He also asserted that there was a possible conflict between Dr. Draper and Dr. Weiss, an attending osteopath, and that the Office should have requested that Dr. Draper clarify his opinion.

FACTUAL HISTORY

The Office accepted that on March 8, 1995 appellant, then a 39-year-old letter carrier, sustained an aggravation of preexisting osteoarthritis of the right thumb when a hand truck fell off a cart and struck her thumb. She did not stop work at the time of the injury but was given a limited-duty assignment. On February 20, 1996 Dr. Stephen L. Hershey, an attending Board-certified orthopedic surgeon, performed an arthrodesis with a proximal right ulnar bone graft to the right thumb to treat unstable basal joint arthritis. The Office authorized this procedure. In postoperative progress reports, he noted that appellant also had basal joint arthritis of the left thumb and right wrist. She returned to limited duty on May 25, 1996. Dr. Hershey submitted an August 2, 1996 report indicating that appellant could have performed limited duty as of April 25, 1996, despite the “severely limited” use of the right hand. Based on Dr. Hershey’s opinion, the Office issued an August 29, 1996 decision denying her claims for total disability after April 25, 1996.

Appellant submitted periodic reports from Dr. Hershey dated from October 7, 1996 to November 12, 2002, providing continued restrictions against repetitive right hand motions and heavy lifting due to pain and diminished grip strength in the right hand caused by the arthrodesis. During this period, the Office referred appellant for second opinion examinations, performed on September 4, 1997 by Dr. Andrew B. Satel and on January 7, 1999 by Dr. Richard J. Mandel, both Board-certified orthopedic surgeons. Both physicians noted impairments of grip and pinch strength in the right hand and recommended continued limited duty.

On February 24, 2003 appellant claimed a schedule award. In support of her claim, appellant submitted a November 4, 2002 report by Dr. David Weiss, an attending osteopath, who provided a history of injury and treatment. On examination Dr. Weiss found normal ranges of motion for all joints of the right thumb. He noted no neurologic abnormalities or sensory loss. Dr. Weiss diagnosed post-traumatic basilar joint arthritis with instability of the right thumb and status post arthrodesis with proximal ulnar bone grafting to the right thumb. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, he found a 20 percent deficit for grip strength according to Table 16-34, page 509¹ and a 3 percent impairment due to pain according to Figure 18-1, page 574.² Dr. Weiss then added these percentages to total a 23 percent impairment of the right upper extremity.

In a March 13, 2003 memorandum, the Office requested that an Office medical adviser review Dr. Weiss’ schedule award rating. The Office medical adviser responded that, as appellant’s right thumb was surgically fused at the carpometacarpal joint, the fifth edition of the A.M.A., *Guides* at page 508 “preclude[d] giving a rating for loss of grip strength, where there is decreased motion.” The Office medical adviser recommended obtaining a second opinion to determine ranges of motion and whether there were any motor or sensory impairments.

¹ 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.” According to this table, a 31 to 60 percent loss of strength equals a 20 percent impairment of the upper extremity.

² Figure 18-1, page 574 of the fifth edition of the A.M.A., *Guides* is entitled, “Algorithm for Rating Pain-Related Impairment in Conditions Associated With Conventionally Ratable Impairment.”

The Office then referred appellant, the medical record and a statement of accepted facts to Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. In an August 11, 2003 report, he provided a history of injury and treatment and reviewed the medical record and statement of accepted facts. Dr. Draper opined that appellant had reached maximum medical improvement as of that day. He provided range of motion measurements for the right elbow, forearm and wrist and each finger of the right hand, noting no abnormalities or impairments of any of these joints. Dr. Draper referred to the fifth edition of the A.M.A., *Guides* in examining appellant's right thumb, determining that a range of motion from 0 to 70 degrees flexion of the interphalangeal joint equaled a 1 percent thumb impairment according to Table 16-12, page 456.³ According to Table 16-16, page 458,⁴ he measured thumb radial abduction at 45 degrees. Dr. Draper found no impairment of the metacarpal phalangeal joint according to Table 16-15, page 437 as the range of motion was normal at 0 to 80 degrees flexion. He further found that thumb adduction limited to 4 centimeters equaled a 10 percent impairment of the thumb due to ankylosis and fusion, according to Table 16-18b, page 459.⁵ Dr. Draper further found a 27 percent impairment of the right thumb due to opposition limited to 4 centimeters with markedly limited motion and fusion of the carpal metacarpal joint, according to Table 16-19, page 460.⁶ He then added these percentages of impairment according to the example provided at Table 16-25, page 460,⁷ to total a 38 percent impairment of the right thumb. Dr. Draper noted that, according to Table 16-1, page 438,⁸ a 38 percent impairment of the right thumb equaled a 15 percent impairment of the right hand. He also noted that, according to Table 16-2, page 439,⁹ a 15 percent impairment of the hand equaled a 14 percent impairment of the upper extremity.¹⁰ Dr. Draper noted diagnoses of "[c]arpal metacarpal joint osteoarthritis of the

³ Table 16-12, page 456 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Thumb Impairments Due to Abnormal Motion at the IP [Interphalangeal] Joint."

⁴ Table 16-16, page 458 of the fifth edition of the A.M.A., *Guides* is entitled "Thumb Radial Abduction Measures in Degrees the Angle of Separation Formed Between the First and Second Metacarpal in the Coronal Plane."

⁵ Table 16-18b, page 459 of the fifth edition of the A.M.A., *Guides* is entitled "Thumb Impairment Values Due to Lack of Radial Abduction and to Ankylosis."

⁶ Table 16-19, page 460 of the fifth edition of the A.M.A., *Guides* is entitled "Linear Measurements of Thumb Opposition (centimeters) at Various Positions."

⁷ Example 16-25, page 460 of the fifth edition of the A.M.A., *Guides* provides that impairments of the interphalangeal joint of the thumb due to impaired flexion and extension, adduction and abduction, and opposition should be added to comprise the total impairment for abnormal motion.

⁸ Table 16-1, page 38 of the fifth edition of the A.M.A., *Guides* is entitled "Conversion of Impairment of the Digits to Impairment of the Hand."

⁹ Table 16-2, page 439 of the fifth edition of the A.M.A., *Guides* is entitled "Conversion of Impairment of the Hand to Impairment of the Upper Extremity."

¹⁰ Dr. Draper cautioned that, when using the conversion tables, loss of strength could not be taken into account in determining the impairment rating).

right thumb,” exacerbation of osteoarthritis due to traumatic injury and status “post fusion of the right thumb carpal metacarpal joint.”¹¹

In an October 31, 2003 memorandum, the Office requested that an Office medical adviser review Dr. Draper’s August 11, 2003 report. In a November 5, 2003 report, the Office medical adviser opined that Dr. Draper used the fifth edition of the A.M.A., *Guides* correctly, “adding the separate impairments of the thumb. Since the injury was to the thumb only, the award is for the thumb.” Dr. Draper found that appellant had reached maximum medical improvement as of August 11, 2003 and concurred with the 38 percent impairment rating for the right thumb.

On November 10, 2003 the Office issued appellant a schedule award for a 38 percent impairment of the right thumb based on Dr. Draper’s report as reviewed by the Office medical adviser. The award was equivalent to 28.50 weeks of compensation, to be paid from August 11, 2003 to February 26, 2004.

In a November 17, 2003 letter, appellant requested an oral hearing before a representative of the Office’s Branch of Hearings and Review, held June 22, 2004. At the hearing, she asserted that, since the February 20, 1996 right thumb fusion, she had difficulty with activities of daily living and could not case mail. Appellant noted that she was right-handed. Appellant, through her attorney, alleged that Dr. Draper’s report was insufficient to represent the weight of the medical evidence as he failed to address loss of grip strength. Counsel noted that Dr. Draper found a 14 percent impairment of appellant’s right upper extremity, equivalent to 46.32 weeks of compensation as opposed to the 28.50 weeks awarded. He contended that she was entitled to the greater award. Alternatively, counsel asserted that there was a conflict of medical opinion between Dr. Weiss, for appellant and Dr. Draper, for the government, requiring the appointment of an impartial medical examiner to resolve the conflict.

After the hearing, appellant, through counsel, submitted a June 24, 2004 letter asserting that Dr. Draper’s August 11, 2003 report was insufficient to represent the weight of the medical evidence as he did not provide range of motion measurements for the fingers, wrist, hand or elbow, failed to assess grip strength and did not comment on the presence of any neurologic deficits. She contended that either the Office should request a clarifying report from Dr. Draper or award her a 14 percent impairment of the right upper extremity. Appellant also submitted an October 2, 1997 form report from Dr. Hershey noting work restrictions.

By decision dated and finalized October 26, 2004, the Office hearing representative affirmed the Office’s November 10, 2003 schedule award determination, finding that appellant sustained no more than a 38 percent impairment of her right thumb. The hearing representative found that Dr. Draper properly utilized the correct tables and grading schemes of the fifth edition of the A.M.A., *Guides* in determining that she had a 38 percent impairment of the right thumb. Also, Dr. Draper provided sufficient medical rationale to explain how he correlated his findings on examination with the criteria set forth in the A.M.A., *Guides*. The hearing representative

¹¹ In an accompanying work restriction evaluation (Form OWCP-5), Dr. Draper recommended permanent light duty with limited use of the right hand and thumb.

further found that, as the accepted injury only involved the right thumb, appellant was not entitled to a schedule award for impairment of the entire upper extremity.¹²

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹³ and its implementing regulation¹⁴ sets 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 how 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 and guidelines so that there are uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* as the appropriate standard for evaluating scheduled losses. As of February 21, 2001, the Office uses the fifth edition of the A.M.A., *Guides* to calculate new claims for a schedule award or to recalculate prior schedule awards pursuant to an appeal, request for reconsideration or decision of an Office hearing representative.¹⁵

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.¹⁶ Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.¹⁷

ANALYSIS

In this case, appellant has the burden of proof to submit medical evidence demonstrating establishing that she sustained greater than a 38 percent impairment of the right upper extremity according to the tables and grading schemes of the A.M.A., *Guides*.

¹² The record contains a January 25, 2005 decision approving an attorney's fee for legal services rendered from April 30, 2001 to November 14, 2003. Appellant reviewed and approved the fee request on December 2, 2003. She did not appeal the January 5, 2005 decision to the Board. Therefore, the attorney fee issue is not before the Board on the present appeal.

¹³ 5 U.S.C. § 8107.

¹⁴ 20 C.F.R. § 10.404 (1999).

¹⁵ See FECA Bulletin 01-05 (issued January 29, 2001) (awards calculated according to any previous edition should be evaluated according to the edition originally used; any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

¹⁶ See Paul A. Toms, 28 ECAB 403 (1987).

¹⁷ A.M.A. *Guides*, Chapter 16, "The Upper Extremities," pages 433-521 (5th ed. 2001).

In his November 4, 2002 report, Dr. Weiss, an attending osteopath, performed a schedule award evaluation according to the fifth edition of the A.M.A., *Guides*. He found a 20 percent deficit due to loss of grip strength in the right hand. Dr. Weiss provided an additional 3 percent impairment due to pain, relying on Figure 18-1 of the A.M.A., *Guides*, adding the two impairments to equal 23 percent. However, there is nothing in his report to indicate that he performed a formal pain-related analysis under section 18.3d of the A.M.A., *Guides*. Further, this section of the A.M.A., *Guides* specifically notes that examiners should not use Chapter 18 to rate pain-related impairment for any condition that can be adequately rated on the basis of the body impairment rating systems found in the other chapters, including Chapter 16. Dr. Weiss did not address why appellant's pain could not be adequately addressed under the protocols of Chapter 16. The Board, therefore, finds that she would not be entitled to an increased award due to pain. Therefore, Dr. Weiss' use of Figure 18-1 was improper. Also, he improperly included impairment for loss of strength where there was also loss of motion due to the surgical fusion.¹⁸

To clarify the nature and extent of any permanent impairment, the Office referred appellant, the medical record and a statement of accepted facts to Dr. Draper, a Board-certified orthopedic surgeon, for a second opinion examination. He submitted an August 11, 2003 report and schedule award evaluation based on a thorough clinical examination, including an appropriate set of measurements. According to Figure 16-12 of the A.M.A., *Guides*,¹⁹ flexion of the interphalangeal joint limited to 70 degrees equaled a 1 percent impairment of the thumb. According to Tables 16-16²⁰ and 16-18b,²¹ thumb adduction limited to 4 centimeters at 45 degrees due to ankylosis and fusion equaled a 10 percent impairment of the thumb. Dr. Draper found no impairment of the metacarpal phalangeal joint according to Table 16-15,²² as the range of flexion was normal. According to Table 16-19,²³ thumb opposition limited to 4 centimeters with fusion of the carpal metacarpal joint equaled a 27 percent impairment of the right thumb. Dr. Draper correctly assessed each of these percentages of impairment. He then correctly added the percentages of impairment according to example 16-25²⁴ to total a 38 percent impairment of the right thumb.²⁵ The Board notes that, due to the fusion of the right thumb, Dr. Draper was correct in not including impairment for loss of strength.²⁶

¹⁸ A.M.A., *Guides*, page 508.

¹⁹ *Id.* at 456.

²⁰ *Id.* at 458.

²¹ *Id.* at 459.

²² *Id.* at 437.

²³ *Id.* at 460.

²⁴ *Id.* at 460 (adding two or more abnormal thumb motions).

²⁵ *Id.*

²⁶ *Id.* at 509.

The Board finds that Dr. Draper's August 11, 2003 report was based on a complete, accurate medical history and review of the statement of accepted facts, utilized the correct tables and grading schemes of the A.M.A., *Guides* and contained detailed rationale explaining how he applied the A.M.A., *Guides* to his clinical findings. Therefore, the Board finds that Dr. Draper's opinion is sufficient to represent the weight of the medical evidence in this case.

On appeal, appellant contends that there is a conflict of medical opinion between Dr. Draper, for the government and Dr. Weiss, for appellant. The Board finds that there is no conflict of opinion as Dr. Draper's report clearly outweighs that of Dr. Weiss. Dr. Draper's report is based on a complete, accurate history and provides a well-rationalized impairment rating according to the appropriate portions of the A.M.A., *Guides*. Dr. Weiss misapplied the A.M.A., *Guides* and included inappropriate criteria in his schedule award rating.

Also, at the June 22, 2004 hearing, appellant noted that Dr. Draper found a 14 percent permanent impairment of the right upper extremity, equivalent to 46.32 weeks of compensation, greater than the 28.50 weeks awarded for the 38 percent impairment of the right thumb. She contended that she was entitled to the greater award. The Board has held that where the residuals of an injury to a scheduled member extends into an adjoining area of another scheduled member, such as an injury of a finger into the hand or a hand into the arm, the schedule award should be made on the basis of the percentage loss of use of the larger member.²⁷ Thus, if residuals of appellant's accepted thumb injury extend into the hand or arm, then the Office should base the schedule award on impairment of the larger member. However, Dr. Draper did not find impairment of any part of the right upper extremity other than the right thumb. This precludes a schedule award for impairment of the hand or arm.

CONCLUSION

The Board finds that appellant has not established that she sustained more than a 38 percent impairment of the right thumb, for which she received a schedule award.

²⁷ *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 26, 2004 is affirmed.

Issued: August 3, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board