

On December 7, 2005 appellant, then a 36-year-old senior officer specialist, sustained injury to his right thumb when it became twisted in the handcuffs of an inmate he was trying to restrain. The Office accepted the claim for right thumb mallet finger.

In a March 3, 2006 report, Dr. David C. Napoli, appellant's treating physician, diagnosed right mallet thumb and stated that appellant had reached maximum medical improvement. Range of motion was 25 degrees of flexion at the interphalangeal (IP) joint and 15 to 35 degrees of hyperextension thumb IP joint. Grip strength was reported as 60 pounds on the right and 110 pounds on the left on the first attempt. On a second attempt appellant's grip strength on the right was 80 pounds which Dr. Napoli stated indicated "gross inconsistency of effort." Dr. Napoli reported "[p]inch strength is 5 pounds on the right versus 20 pounds on the left" but noted that inconsistency of effort was demonstrated "when the device is turned over with the needle on the bottom, it improves to 10 pounds on the right." He opined that appellant did "not expect any lasting strength deficit and, in fact, his deficit right now is effort dependent."

On March 22, 2006 appellant filed a claim for a schedule award.

In an August 9, 2006 report, Dr. Thomas L. Martin¹ noted that Dr. Napoli, appellant's treating physician, had left the practice and that he had never seen appellant. Based upon a review of Dr. Napoli's last note, Dr. Martin concluded that appellant reached maximum medical improvement March 3, 2006. He advised that he had never used the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² and that "[w]e do [not] do impairment ratings." In calculating appellant's impairment, Dr. Martin stated that he used "the range of motion numbers that Dr. Napoli documented and placed them into the Table, 16-1a for upper extremity impairment evaluation." He stated that he did not understand how the A.M.A., *Guides* worked, but "gave it my best estimate." With respect to thumb flexion, Dr. Martin determined that appellant had a 37 percent loss of range of motion for flexion. He noted that appellant had a "-15 degrees of extension" for his right thumb and that appellant could not "reach full extension, which would be 0." In concluding, Dr. Martin stated that he was "lost on how this can be converted into a percentage for the hand, for the upper extremity or for the whole person."

On September 1, 2006 the Office medical adviser concluded that appellant had a two percent impairment of the right upper extremity. Using Figure 16-12, page 456 he opined that appellant's 15 degrees lack of extension to neutral with a normal extension of 30 degrees represented a two percent impairment of his right thumb and the 25 degrees of hyperextension and 55 degrees of flexion represented a four percent impairment of the right thumb, for a total six percent impairment of the right thumb. The Office medical adviser then used Table 16-1, page 438 to find that a six percent impairment of the thumb represented a two percent impairment of the hand. Utilizing Table 16-2, page 439 he found a two percent impairment of the hand resulted in a two percent impairment of the right upper extremity.

By decision dated October 23, 2006, the Office issued appellant a schedule award for a two percent permanent impairment of the right thumb. The period of the award ran from December 7 to 17, 2005 and was 1.5 weeks.

In a letter dated December 26, 2006, appellant's counsel requested reconsideration.

¹ Dr. Martin is also a physician with SUN Orthopaedic Group.

² A.M.A., *Guides* (5th ed.)

In a report dated January 15, 2007, Dr. Michael J. Platto, an examining Board-certified physiatrist, diagnosed mallet finger injury with sensory disturbance and loss of range of motion. A physical examination revealed 40 degrees flexion, -12 degrees extension, 42 degrees metatarsophalangeal (MP) joint flexion, 40 degrees MP extension, no adduction deficit and 60 degrees radial abduction. Using Figure 16-12, page 456 he determined 40 degrees of flexion corresponded to a three percent impairment and -12 degrees of flexion corresponded to a two percent impairment. With respect to the MP joint, Dr. Platto utilized Figure 16-15, page 457 to find a two percent impairment due to 42 degrees flexion and a zero percent impairment due to 40 degrees extension. Using Figure 16-19, page 460 he calculated that appellant had a 13 percent impairment due to "Opposition lacked three centimeters." Then adding together these impairment ratings, Dr. Platto found that appellant had a 20 percent impairment of the right thumb. Using Table 16-1, page 438 he determined that a 20 percent impairment of the right thumb resulted in an 8 percent impairment of the hand. With respect to appellant's sensory disturbance, Dr. Platto found that he had a 50 percent impairment of the right thumb using Table 16-6, page 438 which corresponded to a 20 percent impairment of the right hand using Table 16-1. In concluding, he found that appellant had a 28 percent impairment of the hand (20 percent plus 8 percent) which corresponded to a 25 percent impairment of the right upper extremity according to Table 16-2, page 439.

On January 28, 2007 the Office medical adviser reviewed the reports of Dr. Napoli and Dr. Martin and concluded that appellant had a six percent impairment of the right thumb as "there do no[t] seem to be an[y] residuals extending into the hand or arm." As appellant did not have any "residuals extending into the right hand or upper extremity," the Office medical adviser concluded that the impairment rating should be limited to the thumb. He noted a two percent impairment of the right upper extremity equaled 34.16 days, a two percent impairment of the right arm equaled 43.68 days and a six percent impairment of the thumb equaled 31.50 days.

In a February 14, 2007 report, the Office medical adviser noted that the January 15, 2007 report by Dr. Platto did not change his January 28, 2007 rating. He recommended a six percent impairment based on appellant's loss of range of motion. The Office medical adviser stated "an avulsion of the extensor tendon with a mallet thumb does not represent any injury to the nerves" and thus, "there should be no anticipated sensory loss." With respect to an impairment rating for opposition loss, the Office medical adviser noted that appellant's injury "does not affect the base of the thumb or any muscles that would be involved in opposition" and thus no impairment rating for opposition loss is appropriate.

By decision dated March 20, 2007, the Office awarded appellant an additional three percent impairment for his right thumb, for a total five percent impairment of the right thumb.³

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing federal regulation⁵ 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 for all claimants, the Office has adopted the A.M.A., *Guides* (5th ed. 2001) as the uniform standard applicable to all claimants.⁶ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination.⁸ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁹

ANALYSIS

The Board finds that the case is not in posture for decision due to a conflict in medical opinion between Dr. Platto, appellant's examining physician, and the Office medical adviser.

On January 15, 2007 Dr. Platto diagnosed mallet finger injury with sensory disturbance and loss of range of motion. Using Figure 16-12, page 456 he determined 40 degrees flexion corresponded to a three percent impairment and -12 degrees of flexion corresponded to a two percent impairment. With respect to the MP joint, Dr. Platto utilized Figure 16-15, page 457 to find a two percent impairment due to 42 degrees flexion and a 0 percent impairment due to 40 degrees extension. Using Figure 16-19, page 460 he found a 13 percent impairment due to "Opposition lacked three centimeters." Then, Dr. Platto combined the impairment ratings which

³ On March 21, 2007 the Office received a revision to the January 28 and March 14, 2007 memoranda by the Office medical adviser which concluded that appellant was entitled to a five percent impairment of the right thumb.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ 20 C.F.R. § 10.404(a).

⁷ 20 C.F.R. § 10.404(a); see *Thomas P. Lavin*, 57 ECAB ____ (Docket No. 05-1229, issued February 3, 2006); *Jesse Mendoza*, 54 ECAB 802 (2003).

⁸ 5 U.S.C. § 8123(a).

⁹ *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006).

resulted in a 20 percent impairment of the right thumb. Using Table 16-1, page 438 he determined that a 20 percent impairment of the right thumb resulted in an 8 percent impairment of the hand. With respect to appellant's sensory disturbance, Dr. Platto found that appellant had a 50 percent impairment of the right thumb using Table 16-6, page 434 which corresponded to a 20 percent impairment of the right hand using Table 16-1. Dr. Platto found that appellant had a 28 percent impairment of the hand (20 percent plus 8 percent) which corresponded to a 25 percent impairment of the right upper extremity according to Table 16-2, page 439.

On January 28, 2007 the Office medical adviser reviewed the reports of Drs. Napoli and Martin and opined that the impairment rating should be limited to the thumb as there were no residuals extending into the right upper extremity or hand. In a February 14, 2007 report, the Office medical adviser reviewed the January 15, 2007 report by Dr. Platto and found no change from his January 28, 2007 report. He recommended a six percent impairment based on appellant's loss of range of motion. The Office medical adviser stated "an avulsion of the extensor tendon with a mallet thumb does not represent any injury to the nerves" and thus, "there should be no anticipated sensory loss." With respect to an impairment rating for opposition loss, the Office medical adviser noted that appellant's injury "does not affect the base of the thumb or any muscles that would be involved in opposition" and thus, no impairment rating for opposition loss is appropriate. The Board finds that, as both physicians applied and explained their respective applications of the fifth edition of the A.M.A., *Guides* in arriving at diverse percentages of impairment, there is a conflict between Dr. Platto and the Office medical adviser regarding the impairment to the thumb, including whether there is any sensory loss and whether appellant has residuals extending into the right hand or right upper extremity.

The case will be remanded to the Office for referral of appellant to an impartial medical specialist for a determination of impairment in accordance with the relevant standards of the A.M.A., *Guides*.¹⁰ After such further development as the Office deems necessary, an appropriate decision should be issued regarding the extent of appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that this case is not in posture for decision due to a conflict in the medical evidence.

¹⁰ R.C., 58 ECAB ____ (Docket No. 06-1676, issued December 26, 2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 20, 2007 and October 23, 2006 are set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: October 1, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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