

phalanges and partially lacerated radial digital nerve. The ulnar digital nerve was intact. On February 24, 2005 appellant filed a claim for a schedule award.

In a March 9, 2005 report, Dr. Wang stated that appellant continued to have some discomfort and pain in his right thumb. Appellant experienced some decreased sensation in the radial aspect of his thumb. He noted pain when pinching, gripping or pulling with his right hand and had some instability of the interphalangeal (IP) joint. Appellant was unable to use power tools because they irritated his right thumb. Dr. Wang stated:

“On physical examination, [appellant] had a well-healed wound on his right thumb. Some thumbnail deformity was noted. The thumb deviates towards the radial side slightly at the IP joint. Active extension-flexion of the IP [interphalangeal] and MCP [metacarpophalangeal, also abbreviated as MP] joints was present.... [T]he IP joint range of motion was 0 [to] 25 [degrees], the MCP joint had 0 [to] 50 [degrees] and his thumb CMC [carpometacarpal] joint had symmetrical range of motion compared to the left side. Sensory was slightly decreased on the radial aspect of the thumb. Two-point discrimination was eight mm [millimeters] on the radial side and six mm on the ulnar side. A pinch meter was used to measure his pinch strength. A total of three sets of measurements were taken. On average, the pinch strength on the right side was 6 kg [kilograms] and on the left side, it was 8.5 kg.

“Based on the [American Medical Association,] *Guides to the Evaluation of Permanent Impairment*, [A.M.A., *Guides*] (5th [e]d. [2001]), Table 16-5 on page 447, eight mm of two-point discrimination is equivalent to 50 percent of sensory quality impairment. Based on Table 16-6 on page 448, his right thumb [partial] radial digital nerve injury contributes to five percent of thumb impairment. Based on Figure 16-12 on page 456, 25 [degrees] of flexion of the IP joint is equivalent to four percent of thumb impairment and extension to 0 [degrees] is equivalent to one percent of impairment. Based on Figure 16-15 on page 457, the thumb MCP joint flexion to 50 [degrees] is equivalent to one percent of thumb impairment. In summary, [appellant] has six percent impairment of the thumb due to stiffness of the IP and MCP joints. Based on the Strength Loss Index Calculation Formula on page [509], [appellant] has 29 percent of a Strength Loss Index. Based on Table 16-34 on the same page, he has 10 percent of upper extremity impairment due to pinch strength loss. In summary, [appellant] has 11 percent of right thumb impairment due to the sensory deficit on the radial aspect of the thumb as well as lack of full range of motion of his IP joint as well as the MCP joint of the thumb. Based on Table 16-1 on page 438, 11 percent of thumb impairment is equivalent to 4 percent of hand impairment.¹ Based on Table 16-2 on page 439, four percent of hand impairment is equivalent to four percent of upper extremity impairment. Combining the 10 percent of upper extremity impairment due to the lack of pinch

¹ Under the Federal Employees' Compensation Act, if only one digit (thumb or a finger) is impaired, the impairment percentage does not extend to a larger unit, the hand or the upper extremity. 5 U.S.C. § 8107(c)(17), (20). However, Dr. Wang chose to apply Table 16-1 of the A.M.A., *Guides* in which 11 percent thumb impairment converts to 4 percent impairment of the hand.

strength, [appellant] has a total of 14 percent of upper extremity impairment due to his injury. Based on Table 16-3 on the same page, 14 percent of upper extremity impairment is equivalent to 8 percent of whole person impairment².”

On August 8, 2006 Dr. George L. Cohen, a Board-certified internist and Office medical adviser, found that appellant had a four percent impairment of his right hand based on the findings in Dr. Wang’s report.³ He stated:

“Using Figure 16-12 [of the A.M.A., *Guides*], page 456, for 25 degrees of flexion of the thumb IP joint, there is four percent impairment of the right thumb and for 0 degrees extension, one percent. Using Figure 16-15, page 457, for 50 degrees of MP flexion, there is one percent. These figures are added resulting in six percent impairment of the right thumb due to abnormal joint motion.

“Using Figure 16-7, page 447 and Figure 16-6, page 448, for partial radial nerve sensory loss, there is five percent impairment of the right thumb. There is no additional impairment for loss of strength. According to Section 16-8a, page 508 of the [A.M.A., *Guides*], ‘... the impairment due to loss of strength could be combined with other impairments, only if based on unrelated etiologic or pathomechanical causes.... Decreased strength cannot be rated in the presence of decreased motion, painful conditions....’

“The Combined Values Chart, page 604, is used to combine 6 percent impairment for abnormal motion with 5 percent for sensory loss resulting in 11 percent impairment of the right thumb. Using Table 16-1, page 438, 11 percent of the thumb converts to 4 percent impairment of the right hand.”⁴

On August 15, 2005 the Office granted appellant a schedule award for four percent impairment of his right hand from March 9 to May 16, 2005 or 9.76 weeks.⁵

² While the A.M.A., *Guides* provides for impairment to the individual member and to the whole person, the Act does not provide for permanent impairment for the whole person. *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *John Yera*, 48 ECAB 243 (1996). Appellant is not entitled to a schedule award for the whole person based on his accepted right thumb condition.

³ See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office 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, especially when there is more than one evaluation of the impairment present).

⁴ As noted, under the Act, if only one digit (thumb or a finger) is impaired, the impairment percentage does not extend to a larger unit, the hand or the upper extremity. 5 U.S.C. § 8107(c)(17), (20). Dr. Cohen chose to apply Table 16-1 of the A.M.A., *Guides* in which 11 percent thumb impairment converts to 4 percent impairment of the hand. See *supra* note 1.

⁵ The Act provides for 244 weeks of compensation for 100 percent loss or loss of use of a hand. 5 U.S.C. § 8107(c)(3). Multiplying 244 weeks by four percent equals 9.76 weeks of compensation. The Act provides for 75 weeks of compensation for 100 percent loss or loss of use of a thumb. Multiplying 75 weeks by 11 percent equals 8.25 weeks of compensation. The Office granted appellant the greater of the two impairments.

On August 31, 2005 appellant requested a review of the written record. He stated that the schedule award he received was not adequate compensation because his thumb injury continued to be very painful and affected his ability to grasp tools at work and perform his job.

By decision dated December 29, 2005, an Office hearing representative affirmed the August 15, 2005 decision.

On January 26, 2006 appellant requested reconsideration and submitted additional evidence. In notes dated February 1, 2006 to June 12, 2007, Dr. Wang stated that there was no change in his right thumb condition. On October 10, 2007 he stated that the physical examination had not “significantly” changed since appellant’s last visit. Dr. Wang did not address the issue of his right thumb impairment rating.

By decision dated January 7, 2008, the Office denied appellant’s claim for more than four percent impairment of his right hand.⁶

LEGAL PRECEDENT

The schedule award provision of the Act⁷ and its implementing regulation⁸ 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.⁹

ANALYSIS

Dr. Wang found that appellant had 11 percent impairment of his right thumb which is equivalent to 4 percent right hand impairment.¹⁰ He found that appellant had six percent impairment of his right thumb due to decreased range of motion, including four percent for 25 degrees of flexion of the IP joint and one percent impairment for 0 degrees of extension of the IP joint, according to Figure 16-12 on page 456 of the A.M.A., *Guides* and one percent for 50 degrees of flexion of the MCP joint, according to Figure 16-15 on page 457. Appellant had a five percent impairment of the right thumb for partial sensory loss in the radial digital nerve,

⁶ Subsequent to the January 7, 2008 Office decision, appellant submitted additional evidence. The Board’s jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ A.M.A., *Guides* (5th ed. 2001).

¹⁰ *See supra* note 1.

according to Table 16-5 on page 447 (for 8 mm of two-point discrimination) and Table 16-6 on page 448.

Dr. Wang found that appellant had 10 percent upper extremity impairment due to pinch strength loss, according to the Strength Loss Index Calculation Formula and Table 16-34 on page 509 of the A.M.A., *Guides*. Regarding loss of grip and pinch strength, the A.M.A., *Guides* states in section 16.8 at page 508:

“In a rare case, if the examiner believes the individual’s loss of strength represents an impairing factor that has not been considered adequately by other methods in the [A.M.A.], *Guides*, the loss of strength may be rated separately.... If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence....*” (Emphasis in the original.)

Dr. Wang did not adequately explain why pinch strength deficit was an appropriate rating method to apply in determining appellant’s right thumb and right hand impairment. He did not explain why his loss of pinch strength represented an impairing factor that had not been considered adequately by other methods in the A.M.A., *Guides*.¹¹

Dr. Cohen found that appellant had four percent impairment of his right hand based on the physical findings in Dr. Wang’s report. He found that appellant had six percent impairment of his right thumb due to decreased range of motion and five percent due to sensory loss. Dr. Cohen noted that there was no additional impairment for loss of pinch strength, based on section 16-8a at page 508 of the A.M.A., *Guides*, because impairment due to loss of strength can be combined with other impairments only if based on unrelated etiologic or pathomechanical causes and decreased strength cannot be rated in the presence of decreased motion and painful conditions. Using the Combined Values Chart at page 604, he combined the 6 percent impairment for decreased range of motion with 5 percent for sensory loss resulting in 11 percent impairment of the right thumb. Using Table 16-1 at page 438, Dr. Cohen found that 11 percent impairment of the thumb converts to 4 percent impairment of the hand. He considered all the physical findings in Dr. Wang’s report and referenced the applicable sections of the A.M.A., *Guides*. The Board finds that the medical evidence establishes that appellant has no more than four percent impairment of his right hand.

¹¹ On appeal, appellant contends that he should receive compensation for his loss of pinch strength because he can pinch in only one direction and it is painful. When he attempts to pinch in another direction, his right thumb dislocates and causes pain. Appellant’s loss of pinch strength affects his ability to perform his work with his dominant right hand and to support any kind of weight over his head. However, there is no medical report of record explaining why his loss of pinch strength is an impairing factor not considered adequately by other methods in the A.M.A., *Guides*. Appellant also contends that he is entitled to compensation for the potential of developing arthritis in his right thumb due to his accepted injury. In a case he cited as *Cross v. Lavino Shipping*, an employee was awarded compensation based on the possibility of developing arthritis. The Board has held that entitlement to benefits under one program or statute does not establish entitlement to benefits under the Act. See *Daniel Deparini*, 44 ECAB 657, 659-60 (1991).

CONCLUSION

The Board finds that appellant has no more than four percent impairment of his right hand for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2008 is affirmed.

Issued: October 21, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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