

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

M.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Haverton, PA, Employer**

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**Docket No. 08-959
Issued: September 12, 2008**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 14, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' February 5, 2008 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than one percent right hand impairment and two percent left hand impairment, for which he received schedule awards.

FACTUAL HISTORY

On January 19, 2001 appellant, a 41-year-old letter carrier, sustained injury when he fell down some stairs while in the performance of his federal duties. No time was lost from work. The Office accepted the claim for contusion of the right knee and bilateral finger contusions (thumbs). On December 28, 2007 it expanded the claim to include bilateral carpometacarpal (CMC) joint arthritis.

On July 17, 2007 appellant filed a claim for a schedule award. In a June 27, 2007 report, Dr. George L. Rodriguez, an attending Board-certified physiatrist, stated maximum medical improvement was reached May 31, 2005. He concluded that appellant had 30 percent right arm impairment and 30 percent left arm impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Rodriguez found that appellant had 22 percent upper extremity impairment of the CMC joint for both the right and left upper extremity under Table 16-18, page 499 of the A.M.A., *Guides*. He also found appellant had 10 percent upper extremity neurological impairment of the radial and ulnar nerves for both the right and left upper extremity under Tables 16-10, page 482; Table 16-11, page 483, and Table 16-15, page 492 of the A.M.A., *Guides*. For sensory deficit of the radial nerve at the wrist, Dr. Rodriguez opined that appellant had a Grade 4 or 10 percent deficit, which multiplied by 5 percent maximum impairment for the nerve, resulted in 1 percent impairment. For motor deficit of the ulnar nerve at the wrist, he opined that appellant had a Grade 4 or 25 percent deficit, which multiplied by 35 percent maximum deficit for the nerve, resulted in 9 percent impairment.

On July 25, 2007 an Office medical adviser, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon, reviewed the medical evidence of record. He noted the results of Dr. Rodriguez's examination. Although Dr. Rodriguez recommended one percent deficit bilaterally based on radial loss, Dr. Berman found no electromyogram/nerve conduction evidence to support any radial sensory loss on either side. He found no evidence to support any ulnar motor loss, noting there was no documented motor loss on examination or evidence of atrophy, which typically would be present for any ulnar motor loss of the first dorsal interosseous. Dr. Berman found evidence of ulnar sensory loss, but disagreed with Dr. Rodriguez's determination that it resulted in 22 percent bilateral upper extremity impairment. Under Table 16-18, page 499 of the A.M.A., *Guides*, he noted that 22 percent impairment represented 100 percent deficit. Dr. Berman opined that appellant did not have 100 percent deficit as full range of motion of the thumbs was documented in the medical record. He also found that Dr. Rodriguez presented no basis for making 100 percent impairment determination of the CMC joints and noted that it was difficult to make a determination from Dr. Rodriguez's medical records under Tables 16-19 through 16-30 of the A.M.A., *Guides*.

Dr. Berman recommended that appellant receive four percent right arm impairment and four percent left arm impairment. Under Table 16-19, page 500 of the A.M.A., *Guides*, he recommended 20 percent impairment for a moderate joint impairment from synovial hypertrophy which, multiplied by the 60 percent maximum impairment for a unit under Table 16-18, page 499, equaled 12 percent impairment. Dr. Berman recommended that Dr. Rodriguez's 22 percent upper extremity impairment be multiplied by the 12 percent hand impairment, resulting in 1.4 percent impairment or 1 percent impairment rounded down. He further recommended one percent bilateral impairment for CMC joint abnormality. Based on page 492 of the A.M.A., *Guides*, Dr. Berman found the maximum impairment for a radial nerve sensory deficit was 5 percent, which multiplied by Dr. Rodriguez's 10 percent deficit under Table 16-10, represented 1 percent sensory loss, bilaterally. For the ulnar nerve, he found that the 7 percent sensory deficit maximum under Table 16-15 multiplied by a Grade 4 or 25 percent sensory impairment under Table 16-10 resulted in 1.75 percent or 2 percent impairment. Dr. Berman then combined the one percent CMC joint abnormality with the one percent sensory radial abnormality and the two percent ulnar nerve abnormality to find four percent right upper extremity impairment and a four percent left upper extremity impairment.

The Office referred appellant, together with a statement of accepted facts, a list of questions, and the medical record, to Dr. Keith F. Hanley, a Board-certified orthopedic surgeon. In a November 19, 2007 report, Dr. Hanley opined that appellant's claim should be expanded to include the condition of CMC joint arthritis of both thumbs. His examination demonstrated a positive grind test at the base of the metacarpophalangeal joint, normal strength, normal innervations of the ulnar and median nerves, normal sensory examination and normal wrist examination. Examination of the thumb revealed interphalangeal (IP) motion of 10 to 70 degrees on the right, 50 degrees on the left. Metacarpophalangeal (MP) joint was 50 degrees on the right and 35 degrees on the left. Radial abduction was 50 degrees on the right and 45 degrees on the left. Opposition was eight centimeters on both the right and left side. Adduction was one centimeter on the right and two centimeters on the left. Pronation was normal. Dr. Hanley utilized the A.M.A., *Guides* to find that appellant had two percent right thumb impairment and six percent left thumb impairment. Under Figure 16-12, page 456, Dr. Hanley found the loss of IP motion for the thumb equaled one percent on the right side for the measurement of 70 degrees and two percent impairment on the left side for the measurement of 50 degrees. Under Figure 16-15, page 457, abnormal motion of the MP joint was calculated as one percent impairment on the right side for the measurement of 55 degrees and three percent impairment to the left side for the measurement of 35 degrees. Under Figure 16.8a, page 459, there was zero percent loss for radial abduction on the right side, but one percent impairment on the left side for one centimeter adduction under Table 16.8b, page 459. Under Table 16-9, page 460, eight centimeter opposition resulted in zero percent motion impairment on either side. Dr. Hanley opined that the impairment rating was due to injury to the CMC joint as there was no evidence of injury to the ulnar nerve at the elbow or wrist.

Dr. Rodriguez provided follow-up reports on appellant's condition but did not further address permanent impairment pursuant to the A.M.A., *Guides*.

On November 29, 2007 Dr. Berman, the Office medical adviser, agreed with Dr. Hanley's opinion that the accepted condition should be expanded to include CMC joint arthritis of the right and left thumbs. He found that Dr. Hanley properly utilized the tables and charts in the A.M.A., *Guides*, but advised that the two percent right thumb impairment and the six percent left thumb impairment should be converted to hand impairments. Under Table 16-1, page 438, the right thumb impairment of two percent represented one percent hand impairment and the six percent left thumb impairment was two percent hand impairment. On December 28, 2007 the Office expanded the claim to include the additional condition of CMC joint arthritis of the right and left thumbs.

By decision dated February 5, 2008, the Office granted schedule awards for one percent right hand impairment and two percent left hand impairment. The period of the awards ran from November 19, 2007 to January 9, 2008, for a total of 7.32 weeks of compensation. The Office found that the date of maximum medical improvement was November 19, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* as the standard to be used for evaluating schedule losses.³

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.⁴

ANALYSIS

In this case, the Office accepted the conditions of right knee contusion, bilateral finger (thumb) contusions and bilateral CMC joint arthritis.

Dr. Rodriguez opined that appellant had 30 percent right upper extremity impairment and 30 percent left upper extremity impairment. However, he did not fully explain how his impairment rating conformed to the A.M.A., *Guides*. For example, Dr. Rodriguez found 22 percent impairment for each arm due to disorders of the CMC joint under Table 16-18 which is part of Chapter 16.7 of the A.M.A., *Guides*. However the A.M.A., *Guides* state that the severity of impairment is rated under Tables 16-19 through 16-30 and then multiplied by the relative maximum value of the unit involved as specified in Table 16-18.⁵ Dr. Rodriguez did not identify any other table, as contemplated in the A.M.A., *Guides*, by which he rated the severity of impairment and then multiplied by the relative maximum value in Table 16-18. He also did not explain why he sought to grade impairment under Tables 16-10 and 16-11 when Chapter 16.7 of the A.M.A., *Guides* provides that impairment under that section should only be used when "other criteria have not adequately encompassed the extent of impairment."⁶

On July 27, 2007 the Office medical adviser reviewed Dr. Rodriguez's report and found evidence of ulnar sensory loss. However, he noted that there was no basis in the medical record

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404. Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001). *See also Linda Beale*, 57 ECAB 429 (2006).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

⁵ A.M.A., *Guides* 498.

⁶ *Id.* at 499.

to support any radial sensory loss or ulnar motor loss and that it was difficult to make a disability determination of the CMC joints from the medical records. He recommended four percent right upper extremity impairment and four percent left upper extremity impairment. Thereafter, the Office properly referred appellant for a second opinion evaluation.

Dr. Hanley, an Office referral physician, opined that appellant had two percent right thumb impairment and six percent left thumb impairment. Applying Dr. Hanley's findings and calculations to the tables and figures of the A.M.A., *Guides*, the Office medical adviser properly determined that the rating of the larger member was one percent impairment of the right hand and two percent impairment of the left hand based on loss of range of motion of appellant's thumbs. In accordance with Dr. Hanley's report, the date of maximum medical improvement was determined to be November 19, 2007.

The method for computing impairments based on loss of motion of the hands, wrists and fingers is outlined at section 16.4(c) of the A.M.A., *Guides*, at page 452. The Office medical adviser properly relied on Figure 16-12 at page 456 to determine that appellant had one percent right thumb impairment and two percent left thumb impairment, based on a finding of 70 degrees of flexion on the right side and 50 degrees of flexion on the left side for the thumb IP joint. He also correctly relied on Figure 16-15 at page 457 to determine that the MP joint of the thumb resulted in one percent impairment for a right side measurement of 55 degrees and three percent impairment for the left side measurement of 35 degrees. Under Figure 16.8a at page 459, the Office medical adviser properly determined that a 50 degree radial abduction on the right side and a 45 degree radial abduction on the left side resulted in zero percent impairment. Under Figure 16.8b at page 459, he properly determined that one centimeter adduction on the right side resulted in no impairment and two centimeter adduction on the left side resulted in one percent impairment. Under Table 16-9 at page 460, the Office medical adviser properly found that an opposition of eight centimeters on both the right and left sides resulted in zero percent impairment. In accordance with page 465 of the A.M.A., *Guides*, the combined thumb impairments derived for each joint under the Combined Values Chart on page 604, yield total thumb impairments of two percent on the right side and six percent on the left side.⁷ The impairment value for each thumb was then converted to an impairment of the hand pursuant to Table 16-1 at page 438. Under this table, appellant has a right hand impairment of one percent and a left hand impairment of two percent.⁸

The Board finds that the medical adviser on November 29, 2007 properly applied the appropriate tables and figures contained in the A.M.A., *Guides* in determining that appellant had one percent right hand impairment and two percent left hand impairment. There is no rationalized medical evidence of record to establish greater impairment.

⁷ A.M.A., *Guides* 465 (to obtain total finger impairment due to loss of motion, finger impairments derived for each joint are to be combined under the Combined Values Chart). The Board notes that both Dr. Hanley and the Office medical adviser added the impairments for each joint, rather than combining them under the Combined Values Chart, as required. However, the corresponding impairment rating for the hand remains the same in either case.

⁸ The Board notes that, under Table 16-2 at page 439, the one percent right hand impairment and the two percent left hand impairment would result in one percent right and two percent left upper extremity impairment.

CONCLUSION

The Board finds that appellant has no more than one percent right hand impairment and two percent left hand impairment, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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