United States Department of Labor
Employees' Compensation Appeals Board

N.C., Appellant	)	
and	)	**Docket No. 08-161**
	)	**Issued: January 22, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 23, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 21, 2007, which granted him an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than a 41 percent permanent impairment of the right upper extremity, for which he has received schedule awards.

FACTUAL HISTORY

On August 9, 2001 appellant, then a 35-year-old letter carrier, filed an occupational disease claim alleging that he developed right carpal tunnel syndrome while performing his work duties. The Office accepted appellant's claim for right tenosynovitis and right carpal tunnel syndrome and authorized right tenosynovitis and right carpal tunnel releases, which were performed on July 31, 2001. It also accepted acute osteomyelitis of the fingers on the right hand,

partial amputation of fingers on the right hand, staphylococcal infection, abscess and open wound of the right finger. Appellant stopped work on July 9, 2001 and returned to a limited-duty position in October 2002.

In a July 31, 2001 operative report, Dr. Gerard T. Gabel, a Board-certified orthopedic surgeon, performed a flexor tenosynovectomy of the little and long fingers, flexor digitorum sublimes, flexor, tenosynovectomy flexor digitorum sublimes, flexor digitorum profundus of index, long, ring and little, palm and carpal tunnel, flexor tenosynovectomy digital flexors of distal forearm, open carpal tunnel release and median nerve decompression of the forearm. He diagnosed probable fungal mycrobacterial tenosynovitis of the right hand and forearm, severe carpal tunnel syndrome and infracted median nerve, flexor digitorum sublimes rupture at the carpal tunnel level and flexor digitorum profundus ring and little rupture at the carpal tunnel level. Dr. Gabel later noted that appellant developed a staph infection that was treated with antibiotics. On May 28, 2002 he performed an incision and drainage of the right long finger, partial excision of distal phalanx for osteomyelitis and open treatment for fracture and diagnosed right long tip necrosis with exposed bone, distal phalangeal fracture fragment and osteomyelitis of the distal phalanx. On August 28, 2002 Dr. Gabel performed a flexor digitorum superficialis tendon excision of the index and long fingers, flexor digitorum superficialis tenolysis index and long and flexor digitorum profundus tenolysis of the palm, index and long. He diagnosed status post infection of the right forearm with severe median neuritis, destruction of the flexor digitorum superficialis tendons, destruction of the flexor digitorum profundus and flexor digitorum superficialis to little and ring with deficient active and passive range of motion, little and ring finger and scarring of the flexor tendon sheath, little and ring fingers.

On April 17, 2003 Dr. Gabel noted that appellant reached maximum medical improvement and opined that he had 39 percent right arm impairment. He referenced the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[1] On April 29, 2003 appellant filed a claim for a schedule award.

In a letter dated May 29, 2003, the Office advised Dr. Gabel that his April 17, 2003 report was prepared in accordance with the fourth edition of the A.M.A., *Guides*; however, the fifth edition of the A.M.A., *Guides* had been adopted by the Office effective February 1, 2001.[2] It asked Dr. Gabel to submit another impairment rating. On August 13, 2003 an Office medical adviser recommended a second opinion evaluation.

In a September 17, 2003 report, Dr. Bernard Z. Albina, a Board-certified orthopedic surgeon and an Office referral physician, noted appellant's history and reported findings on examination. He found right wrist range of motion of 40 degrees extension, 45 degrees flexion and 25 degrees ulnar deviation. For the right ring and little fingers, Dr. Albina noted total loss of function of the flexor digitorum profundus and flexor digitorum superficialis of the ring and little finger and ankylosis of the proximal interphalangeal joint of the little finger, for 50 percent impairment for the ring and little finger, which converted to 5 percent impairment to the hand for

[1] A.M.A., *Guides* (4th ed. 1993).

[2] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

each finger and 9 percent impairment to the right arm. He calculated that appellant had 15 percent impairment to the right arm due to sensory deficit or pain of the median nerve below the mid forearm[3] and 5 percent impairment of the right arm due to motor deficit of the median nerve below the mid forearm.[4] Dr. Albina noted impairment due to amputation of the distal third of the phalanx of the index finger and distal third of the phalanx of the middle finger of 10 percent impairment each,[5] which converted to 2 percent impairment of the hand for each finger for 4 percent impairment to the right hand which converted to 4 percent impairment of the arm.[6] Using the Combined Values Chart of the A.M.A., *Guides*, he found that appellant had a total 29 percent impairment to the right upper extremity.

On December 3, 2003 an Office medical adviser used Dr. Albina's findings and determined that appellant had 37 percent impairment of the right arm. The medical adviser used Dr. Albina's range of motion findings to determine that appellant had 17 percent impairment due to lost range of motion, 15 percent impairment for sensory deficit, 5 percent impairment for motor deficit and 3 percent impairment for amputation of the tip of the index finger and 3 percent impairment for amputation of the long finger.

In a decision dated December 24, 2003, the Office granted appellant a schedule award for 37 percent permanent impairment of the right arm.

Appellant submitted additional reports from Dr. Gabel, who noted that he developed onychomyocosis to the nail, which was related to the original injury. In a November 1, 2006 operative report, he performed an incision and drainage of the right index, open fracture of the right index and osteomyelitis of the right index, distal phalanx of the right index and diagnosed right index distal phalangeal osteomyelitis with associated tip abscess. On November 16, 2006 Dr. Albina performed an incision and drainage of the right index including amputation and excision of nonviable remnant and diagnosed right index finger abscess.

The Office accepted osteomyelitis of the fingers of the right hand, partial amputation of the fingers of the right hand, staphylococcus of the right hand, abscess of the finger of the right hand and open wound of the right finger.

On March 26, 2007 appellant filed a schedule award claim and submitted a March 15, 2007 report from Dr. Gabel, who advised that he reached maximum medical improvement. Dr. Gabel noted that appellant previously had 20 percent impairment of the right index finger for 4 percent impairment of the hand.[7] He opined that due to the most recent amputation on November 16, 2006 appellant had an additional four percent impairment of the right arm pursuant to the A.M.A., *Guides*.

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[3] A.M.A., *Guides* 482, 492, Table 16-10, 16-15.

[4] *Id*. at 484, 492, Table 16-11, 16-15.

[5] *Id*. at 447, Figure 16-7.

[6] *Id*. at 438, Table 16-1.

[7] *Id*.

In an April 16, 2007 report, an Office medical adviser opined that appellant had 41 percent permanent impairment of the right arm. He recalculated appellant's impairment, noting that loss of more than one-half of the distal phalanx was 50 percent of the digit and calculated that 50 percent loss of an index finger was 10 percent of the right hand or 9 percent of the upper extremity.[8] The medical adviser referenced FECA Bulletin Nos. 88 and 89, which were incorporated into the procedure manual, which provide that loss of more than one-half of the distal phalanx is 50 percent of the digit.[9] He noted that appellant was previously granted a three percent impairment of the right upper extremity for loss of the distal tip of the phalanx and was an additional six percent impairment to the right upper extremity. The medical adviser noted that using the Combined Values Chart, appellant had 41 percent total impairment of the right arm. As appellant had previously received a schedule award for 37 percent impairment of the right arm, he was entitled to an additional 4 percent impairment of the right upper extremity.

In a May 21, 2007 decision, the Office granted appellant a schedule award for 41 percent permanent impairment of the right arm, less the award previously granted.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[10] and its implementing regulation[11] 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.[12]

ANALYSIS

Appellant contends that he has more than 41 percent impairment of his right arm. The Office accepted appellant's claim for right tenosynovitis, right carpal tunnel syndrome, acute osteomyelitis of the fingers on the right hand, partial amputation of fingers on the right hand, staphylococcal infection, abscess of the right finger and open wound of the right finger. It authorized several surgical procedures to treat the accepted conditions. On December 24, 2003 the Office granted appellant a schedule award for 37 percent permanent impairment of the right arm. After appellant underwent additional surgery, he requested an additional schedule award.

[8] *Id*. at 438, 439, Table 16-1, 16-2.

[9] *See* Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 3.700(4)(a)(1) (March 2005).

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404 (1999).

[12] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

In support of his request for an additional schedule award, appellant submitted a March 15, 2007 report from Dr. Gabel, who advised that appellant underwent additional surgery and amputation of his right index finger on November 1 and 16, 2006 and that the length of the digit was 60 percent. Dr. Gabel opined that due to the most recent amputation appellant had 12 percent impairment of the hand and that this resulted in an additional four percent impairment of the arm or 41 percent total impairment of the right arm.

The medical adviser properly utilized the findings in Dr. Gabel's March 15, 2007 report and correlated them to specific provisions in the A.M.A., *Guides* to determine the impairment rating. In a report dated April 16, 2007, the Office medical adviser noted the additional amputation performed by Dr. Gabel and advised that Office procedure provides that loss of more than half of a phalanx the award shall be for the entire loss of the first phalanx or 50 percent of the digit.[13] The medical adviser properly calculated that 50 percent loss of an index finger was 10 percent of the right hand or 9 percent of the upper extremity.[14] As appellant was previously granted three percent impairment of the right arm due to the loss of the distal tip of the phalanx of the index finger, he would be entitled to an additional award of six percent impairment to the right arm due to the additional amputation. The medical adviser noted that appellant was previously granted a schedule award for 37 percent impairment of the right arm. The medical adviser stated that, under the Combined Values Chart,[15] an additional 6 percent impairment combined with 37 percent impairment, previously found, yielded 41 percent impairment of the right arm. He concluded that this resulted in appellant having an additional four percent impairment of the right arm.

The medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Gabel's report and reached an impairment rating of 41 percent for the right upper extremity. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 41 percent impairment of the right upper extremity. The Board notes that Dr. Gabel also found that appellant had total impairment of 41 percent of the right arm.

CONCLUSION

The Board finds that appellant has no more than 41 percent permanent impairment of the right arm, for which he has received a schedule award.

[13] A.M.A., *Guides* 438, 439, Table 16-1, 16-2; Office Procedures provide that for loss of more than half of a phalanx the award shall be for the entire loss of the first phalanx or 50 percent of the digit; *see* Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 3.700(4)(a)(1) (March 2005).

[14] A.M.A., *Guides* 438, 439, Table 16-1, 16-2.

[15] *Id*. at 604.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2009
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