United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 08-2246**
	)	**Issued: May 15, 2009**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, San Antonio, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated March 11 and June 30, 2008. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained any permanent impairment of her left upper extremity causally related to her accepted left carpometacarpal sprain, left wrist sprain, or left radiocarpal fracture, thereby entitling her to a schedule award.

FACTUAL HISTORY

Appellant, a 52-year-old special agent, injured her left thumb and left wrist on June 19, 2007 when she picked up a heavy box. The Office accepted the claim for left thumb carpometacarpal sprain, left wrist sprain and left radiocarpal fracture.

On February 7, 2008 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left upper extremity.

In a report dated January 22, 2008, Dr. Thilo R. Weisflog, a specialist in orthopedic surgery, evaluated the permanent impairment to appellant's left upper extremity. He noted that appellant was right-hand dominant and that appellant had a significant history of previous left-hand injury of March 23, 2006 for which appellant had been declared at maximum medical improvement on September 16, 2006 and had been issued a zero percent left upper extremity impairment rating. Dr. Weisflog advised that appellant reached maximum medical improvement for her June 19, 2007 injury on January 22, 2008. He found that appellant had a 12 percent permanent impairment of the left thumb pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (the A.M.A., *Guides*). Dr. Weisflog derived this impairment by finding a 12 percent left thumb impairment based on decreased range of motion. Relying on Figure 16-12 at page 456, he measured 60 degrees range of motion for joint flexion of the interphalangeal thumb joint flexion, for a one percent impairment; a 39 degree flexion for metacarpophalangeal thumb joint flexion, for a two percent impairment; a thumb adduction of 4.0 centimeters, for a four percent thumb impairment; radial abduction of 40 degrees, for a two percent thumb impairment; and thumb resistance of 6.0 centimeters, for a three percent thumb impairment. Dr. Weisflog completed an upper extremity impairment rating worksheet and converted the 12 percent finger impairment pursuant to conversion Tables 16-1 and 16-2 at page 439 to find a total 5 percent left upper extremity impairment.

In a report dated February 27, 2008, an Office medical adviser reviewed Dr. Weisflog's January 22, 2008 report and found a zero percent impairment. He asserted that the A.M.A., *Guides* did not provide any impairment due to strains or sprains. The Office medical adviser stated that the Office did not recognize those conditions as being permanent in nature and could not be the basis of an impairment award.

By decision dated March 11, 2008, the Office denied appellant's claim for a schedule award. It found that the medical evidence of record did not support that she had sustained an employment-related permanent impairment.

By letter postmarked April 14, 2008, appellant requested a review of the written record.

By decision dated June 30, 2008, the Office's Branch of Hearings and Review denied appellant's request for a review of the written record. It found that her request was postmarked April 14, 2008, which was more than 30 days after the issuance of the Office's March 11, 2008 decision, and that she was not entitled to a review of the record as a matter of right. The Office considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] 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* (fifth edition) as the standard to be used for evaluating schedule losses.[3]

ANALYSIS

The Board finds that the case is not in posture for decision.

The Office denied appellant's request for a schedule award based on the Office medical adviser's February 27, 2008 impairment evaluation. The Office medical adviser reviewed the January 22, 2008 report of Dr. Weisflog and determined that appellant did not sustain any permanent impairment to her left thumb. He stated that the A.M.A., *Guides* do not provide any impairment due to strains or sprains and that the Office does not recognize these conditions as being permanent in nature. The Board notes that the fact that there is no specific provision for an impairment based on strains or sprains in the A.M.A., *Guides* does not warrant a conclusion that such an award is precluded. The Act provides that loss of use of the thumb is compensable by schedule award.[4] The Board routinely reviews schedule award claims for which the accepted condition is sprain or strain and has recognized that a sprain/strain may result in a permanent impairment.[5] Moreover, the record reflects that appellant's injury was accepted for a left thumb radiocarpal fracture.

Upon reaching maximum medical improvement, the evidence ordinarily permits a determination to be made as to the degree of permanent loss of use of the scheduled member.[6] Dr. Weisflog noted that appellant had reached maximum medical improvement on June 19, 2007. He obtained measurements to rate appellant's left thumb impairment arising from

[1] *See* 5 U.S.C. § 8107(c).

[2] *Id*. at § 8107(c)(19).

[3] 20 C.F.R. § 10.404.

[4] 5 U.S.C. § 8107(c)(6).

[5] *See R.H., Executrix of the Estate of B.H.*, 59 ECAB ___ (Docket No. 07-2286, issued September 19, 2008). The Office accepted the claim for left ankle sprain, the Board affirmed a schedule award for 27 percent permanent impairment of the left lower extremity. *See also Linda R. Sherman*, 56 ECAB 127 (2004), the Office accepted the claim for left shoulder sprain, the Board affirmed a schedule award for eight percent permanent impairment of the left upper extremity. *Jesse Mendoza*, 54 ECAB 802 (2003), the Office accepted the claim for knee, leg and lumbar sprain and contusions of the face, scalp and neck, the Board affirmed schedule awards for one percent impairment of the right lower extremity and five percent impairment of the left lower extremity.

[6] *Michael Vining (Kevin M. Vining)*, 52 ECAB 354 (2001).

her accepted injury pursuant to indicated figures and tables of the A.M.A., *Guides*. The method for calculating motion impairments for individual digits is outlined in subsection 16.4c of the A.M.A., *Guides,* at page 452, which states:

> "*The motion impairment pie charts are used for motion impairment calculation of a specific joint.* Because the same relative value scale is applied to each motion unit and to its components, the impairment values derived for each are *added* directly together to obtain the total motion impairment of a specific joint. The total impairment value of a motion unit is obtained by *adding* the impairment values contributed by its two component movements (*e.g.,* impairment of flexion/extension motion unit equals I_F percent plus I_E percent)…." (Emphasis in the original.)

Dr. Weisflog found that appellant had a 12 percent left thumb impairment based on decreased range of motion in accordance with Figure 16-12 at page 456 of the A.M.A., *Guides.* He noted a one percent impairment for joint flexion of the interphalangeal thumb joint flexion; a two percent impairment based on decreased metacarpophalangeal thumb joint flexion; a four percent thumb impairment for decreased thumb adduction; a two percent impairment for diminished radial abduction, and a three percent impairment based on thumb resistance. Although he calculated appellant's 12 percent left thumb extremity impairment by properly referencing the applicable standards of the A.M.A., *Guides* relating to range of motion deficits of the left thumb, the Office medical adviser erred by failing to consider these findings. Dr. Weisflog's report makes note of range of motion deficits relating to appellant's left thumb which clearly indicate that appellant sustained permanent impairment due to his accepted injury. Although Dr. Weisflog converted the 12 percent left thumb impairment to a 5 percent left upper extremity impairment, the report does not explain the basis for such conversion. Dr. Weisflog stated that there was no impairment at the level of the wrist or hand. Therefore, any schedule award would be for impact to the left thumb.[7]

Furthermore, Dr. Weisflog noted that appellant had a previous injury to the left upper extremity which had reached maximum medical improvement and had been rated to be a zero percent permanent impairment. The Office did not address this preexisting injury in the denial of appellant's claim for a schedule award. In determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting conditions are to be included.[8]

Accordingly, the Office's March 11, 2008 decision will be set aside and the case remanded to the Office for further development as to appellant's left thumb impairment consistent with the standards of the A.M.A., *Guides*.[9]

[7] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4a (March 2005).

[8] *Mike E. Reid*, 51 ECAB 543 (2000).

[9] In light of the Board's remand of the March 11, 2008 schedule award decision, the Office's June 30, 2008 decision denying an oral hearing is rendered moot.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 15, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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