

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

M.Z., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milwaukee, WI, Employer**

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**Docket No. 14-1108
Issued: October 6, 2014**

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 April 15, 2014 appellant filed a timely appeal from the February 12, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has more than an eight percent impairment of his right arm.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that subsequent to OWCP's February 12, 2014 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

FACTUAL HISTORY

On January 4, 2011 appellant, then a 51-year-old letter carrier, filed an occupational disease claim alleging a lack of mobility and strength in his right thumb after 20 years working eight hours a day, five to six days a week sorting and delivering mail in the performance of duty. He did not stop work. On April 21, 2011 OWCP accepted appellant's claim for right hand joint pain.

On June 30, 2011 appellant underwent an authorized right thumb carpometacarpal joint arthroplasty. A July 15, 2011 x-ray of the right thumb, read by Dr. John Weber, a Board-certified diagnostic radiologist, revealed excellent position of the prosthesis component with no evidence of loosening. An August 16, 2011 x-ray of the right thumb, read by Dr. Weber, revealed good position of the prosthesis with no evidence of loosening or instability.

On October 21, 2011 appellant requested a schedule award. By letter dated November 4, 2011, OWCP informed him of the evidence needed to support his claim. It requested that he submit additional medical evidence within 30 days.

In a March 6, 2012 report, Dr. Eric Newgent, an osteopath Board-certified in sleep and occupational medicine, noted appellant's history and treatment. He determined that appellant reached maximum medical improvement. Dr. Newgent advised that he would refer appellant for a functional capacity evaluation (FCE) and an examination to determine the percentage of permanent impairment to his thumb. In a July 27, 2012 report, he diagnosed degenerative joint disease of the right thumb carpometacarpal joint status post arthroplasty on June 30, 2011, work related.

In an August 13, 2012 report, Dr. Newgent noted appellant's history, reviewed a March 22, 2012 functional capacity evaluation and advised that he returned to regular duty without restrictions. He last saw appellant on July 22, 2012. Dr. Newgent explained that appellant had severe degenerative joint disease of his right thumb, carpometacarpal joint and underwent carpometacarpal joint arthroplasty on June 30, 2011, which was successful. Appellant had occasional pain but for the most part, it had resolved. Dr. Newgent found that appellant had some restriction of his range of motion to include a 50 percent decrease in carpometacarpal flexion on the right as compared to the left and a 30 percent decrease of metacarpophalangeal joint flexion on the right as compared to the left. He also found some decrease in his carpometacarpal extension, approximately 50 percent on the right as compared to the left side and his interphalangeal joint extension was about 50 percent decreased on his right as compared to the left. Dr. Newgent advised that muscle testing showed about 30 percent to 40 percent decrease in strength on his right as compared to his left. He found that the neurologic examination was intact and there was no atrophy. Dr. Newgent advised that appellant had reached maximum medical improvement. He referred to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009) hereinafter A.M.A., *Guides*. Dr. Newgent referred to Table 15-2, the regional grid for digit impairments and determined that appellant had a class 3 impairment.³ He utilized the grade modifier adjustments and found 26 percent impairment to the right thumb.

³ A.M.A., *Guides* 393.

In a June 17, 2013 report, Dr. David H. Garelick, an OWCP medical adviser, reviewed the A.M.A., *Guides*. He determined that appellant reached maximum medical improvement on June 30, 2012. Dr. Garelick explained that he utilized Table 15-2 and Table 15-12.⁴ He noted that Dr. Newgent recommended a 26 percent impairment to the digit under Table 15-2, page 394. The medical adviser indicated that, according to Table 15-12, this corresponded to a permanent impairment of nine percent to the right upper extremity.

In a February 12, 2014 decision, OWCP granted appellant a schedule award for 21.96 weeks of compensation for an eight percent permanent impairment of the right arm.⁵

LEGAL PRECEDENT

The schedule award provision of FECA,⁶ and its implementing federal regulations,⁷ 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, FECA 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, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁸ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁹ For decisions issued after May 1, 2009, the sixth edition will be used.¹⁰

In addressing upper extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).¹¹ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹²

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹³

⁴ *Id.* at 393, 421.

⁵ Although OWCP's decision indicated the left arm, the accepted condition was for pain in the joint of the right thumb and surgery was authorized to the right thumb. The impairment findings were for the right arm.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.* at § 10.404(a).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

¹⁰ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹¹ A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

¹² A.M.A., *Guides* 521.

¹³ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

ANALYSIS

Appellant provided an August 13, 2012 report from Dr. Newgent, who rated permanent impairment to his right thumb using the A.M.A., *Guides*. Dr. Newgent referred to Table 15-2, the regional grid for digit impairments to determine that appellant had 26 percent impairment to his right thumb.¹⁴

OWCP properly referred the case to Dr. Garelick, an OWCP medical adviser. On June 17, 2013 Dr. Garelick utilized the findings provided by Dr. Newgent and agreed with the 26 percent rating to the right thumb. He noted that, according to Table 15-12, this corresponded to nine percent impairment of the right arm.¹⁵ Dr. Garelick properly utilized the A.M.A., *Guides* to determine that appellant had an impairment of nine percent of the right upper extremity. The Board notes that OWCP's February 12, 2014 decision incorrectly found an eight percent impairment to the left upper extremity.¹⁶ The Board will modify the schedule award to reflect that the impairment is nine percent to the right upper extremity. On return of the record, OWCP should award an additional one percent for the right upper extremity.

Appellant has not submitted any other medical evidence conforming with the A.M.A., *Guides* to establish greater impairment.

On appeal, appellant argued that he disagreed with the amount of the award and noted that the award provided by his physician, Dr. Newgent, was more accurate. He explained that Dr. Newgent spent several hours examining him and providing findings. As noted, the physicians of record were in agreement regarding the findings. Dr. Garelick's merely converted the findings for the digit to the upper extremity as allowed by the A.M.A., *Guides*.¹⁷ Appellant also noted that the decision by OWCP was inaccurate. The Board has corrected these inaccuracies and directed OWCP to award an additional one percent.

CONCLUSION

The Board finds that appellant has nine percent impairment of the right upper extremity.

¹⁴ See A.M.A., *Guides* 394.

¹⁵ *Id.* at 421.

¹⁶ *Supra* note 4.

¹⁷ Where the residuals of an injury to a member of the body specified in the schedule extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, or a hand into the arm, the schedule award should be made on the basis of the percentage loss of use of the larger member. *George A. Boyd*, 56 ECAB 707 (2005). To the extent that appellant asserts that 26 percent impairment of the thumb is more beneficial than 9 percent of the arm, the Board notes that under 5 U.S.C. § 8107(c)(1), 312 weeks of compensation is payable for 100 percent loss of use of the arm, while under section 8107(c)(6), 75 weeks of compensation is payable for 100 percent loss of use of the thumb. For 9 percent impairment of an arm, 28.08 weeks of compensation is payable (.09 x 312), while for 26 percent impairment of a thumb, 19.5 weeks of compensation is payable (.26 x 75). Thus, payment for impairment of the arm is more advantageous to appellant.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: October 6, 2014
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