

nail bed laceration. Dr. McMorris performed a procedure to close the wound. An x-ray report dated June 21, 2003 showed a one millimeter avulsion fracture off the tip of the distal ungula tuft. On September 10, 2003 appellant filed a claim for a schedule award.

By letter dated September 19, 2003, the Office requested that appellant's treating physician address whether maximum medical improvement had been reached and, if so, the date, and the recommended percentage of impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

By decision dated October 29, 2003, the Office denied the claim, stating that the evidence was not sufficient to establish that appellant sustained a permanent impairment to a scheduled member due to his accepted work injury. The Office noted that the medical evidence appellant submitted did not indicate any date of maximum medical improvement, did not describe the impairment or provide any physical findings to ascertain the degree of impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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.³

To establish entitlement to a schedule award, the medical evidence must establish that appellant's impairment has reached maximum medical improvement, describe the impairment in sufficient detail for the claims examiner and others reviewing the file to visualize the character and degree of disability and give a percentage evaluation of the impairment pursuant to the A.M.A., *Guides* (5th ed. 2001).⁴ The determination of maximum medical improvement means that the physical condition of the injured member has stabilized and will not improve further.⁵

ANALYSIS

Appellant did not submit any medical evidence to establish that he is entitled to a schedule award for his June 21, 2003 employment injury, a fracture of the distal tip of the right middle finger. Appellant submitted a June 22, 2003 emergency room report of Dr. McMorris,

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.404.

³ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁴ *Jerre R. Rinehart*, 45 ECAB 518, 521 n4 (1994); *James E. Archie*, 43 ECAB 180, 188 n9 (1991).

⁵ *Orlando Vivens*, 42 ECAB 303, 308 (1991).

who treated him on an emergency basis, and an x-ray report dated June 21, 2003, but these reports do not provide an opinion on any permanent impairment of the right middle finger or otherwise contain adequate findings for making such an impairment rating. The Office asked Dr. Steenlage, an attending Board-certified orthopedic surgeon, to provide an opinion regarding whether maximum medical improvement had been reached, and if so, to provide an impairment rating pursuant to the A.M.A., *Guides* (5th ed. 2001). However, Dr. Steenlage did not respond to this request. The Board notes that appellant was provided with an opportunity to submit relevant medical evidence; however, the record does not contain sufficient medical evidence to establish any permanent impairment entitling him to a schedule award. The Office properly denied his schedule award claim.⁶

CONCLUSION

The Board finds appellant did not meet his burden of proof to show that he is entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ On appeal, appellant submitted evidence to establish that he is entitled to a schedule award. The Board, however, may not consider evidence that was not before the Office at the time of the Office's final decision. *Sherry L. McFall*, 51 ECAB 436, 440 n17 (2000). The Board cannot consider evidence submitted after the Office's decision. Appellant may resubmit this evidence to the Office with a request for reconsideration. See 20 C.F.R. §§ 10.607, 10.608, 10.609.