

Appellant's claim was subsequently developed and by letters dated April 14, 2003, the Office requested that appellant's physician, Dr. Keith A. Glowacki, a Board-certified orthopedic surgeon, provide a report to determine the extent of impairment of the right thumb in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*).¹ Appellant was also advised that he should contact his physician to determine whether he was entitled to an impairment rating.²

In a May 21, 2003 report, Dr. Glowacki indicated that appellant had a three percent thumb impairment and a five percent upper extremity impairment.³ The Office also received a May 30, 2003 report from Dr. Glowacki, indicating that the interphalangeal (IP) joint of the thumb was 0 and 62 degrees, the metacarpophalangeal (MP) joint of the thumb was 0 and 40 degrees, and the metacarpal joint of the thumb was 0 and 38 degrees. Dr. Glowacki indicated that appellant had minimal loss of function due to atrophy and opined that the radial joint line of the right thumb MP joint had lessened to the point that there was less than a millimeter of cartilage between the two bones. He opined that appellant may have post-traumatic arthritis that could require fusion. Dr. Glowacki indicated that appellant reached maximum medical improvement on July 17, 2001 and confirmed that he used the fifth edition of the A.M.A., *Guides*.⁴

By letter dated July 9, 2003, the Office advised appellant of deficiencies in his schedule award claim and requested additional information.

In a July 19, 2003 report, Dr. Richard E. Grant, a Board-certified orthopedic surgeon and Office medical adviser, utilized the measurements provided by Dr. Glowacki, made findings and referred to specific pages and tables of the A.M.A., *Guides*. He determined that appellant was entitled to a schedule award of eight percent permanent impairment of the right upper extremity.

By decision dated August 13, 2003, the Office issued a schedule award for eight percent permanent impairment of the right upper extremity. The period of the award was 24.96 weeks to run from April 14 to August 9, 2003.⁵

¹ The fifth edition of the A.M.A., *Guides*, became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date.

² The record contains a functional capacity evaluation dated June 28, 2001, in which appellant was referred by his treating physician to obtain an evaluation of his residual functional capacity with regard to his right thumb. The evaluation was conducted by Joseph Bocella, M.Ed., who indicated that appellant had a five percent upper extremity impairment.

³ He referred to the functional capacity evaluation findings of July 17, 2001.

⁴ In an earlier treatment note dated July 17, 2001, Dr. Glowacki noted appellant was in follow up following his functional capacity evaluation and opined that appellant had a six percent impairment of the hand.

⁵ The Office also issued a decision dated August 13, 2003, in which appellant received a 71 percent permanent impairment of the right lower extremity. However, appellant is not challenging the amount of this award. Rather, on appeal, appellant indicates he is challenging why he only received 8 percent to his right upper extremity when he received 71 percent to his right lower extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁶ and its implementing regulation⁷ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of specified 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*⁸ have been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁹

ANALYSIS

In the instant case, appellant's treating physician Dr. Glowacki, utilized the A.M.A., *Guides*, provided physical findings and concluded that appellant had a 13 percent impairment of the thumb, which translated to a 5 percent upper extremity impairment.

The Office medical adviser, in a July 19, 2003 report, utilized Dr. Glowacki's May 30, 2003 findings and applied the fifth edition of the A.M.A., *Guides*. In accordance with the A.M.A., *Guides*, he advised that, according to Figure 16-12, page 456, of the A.M.A., *Guides*, 62 degrees loss of flexion at the IP joint represents 1 percent impairment of the thumb. He advised that, according to Figure 16-15, page 457, MP joint flexion at 40 degrees flexion represented a 3 percent impairment of the thumb. The Office medical adviser stated that Table 16-8a, page 459, notes that 38 degrees of radial abduction represents 3 percent impairment of the thumb. The Board notes that these values would total six percent of the thumb for loss of range of motion. The Office medical adviser indicated that, pursuant to Table 16-8(a) at page 459 and Table 16-18, page 499, appellant had one millimeter of right thumb osteoarthritis, or a five percent impairment of the thumb and upper extremity. However, the Board notes that it is unclear how the Office medical adviser derived this figure from the cited tables. Although the Office medical adviser determined that appellant should receive an eight percent impairment to the right upper extremity, however, he was not clear as to explaining how any impairment of the thumb extended into the upper extremity.¹⁰

The determination of the degree of appellant's permanent impairment was not based on a proper application of the A.M.A., *Guides*. The evidentiary basis for the Office medical adviser's

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁹ *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

¹⁰ Where residual of an injury to a member of the body specified in the schedule provisions of the Act extend into an adjoining area of a member also enumerated in the schedule, the award should be made on the basis of percentage loss of use of the larger member. See *Janet L. Adamson*, 52 ECAB 431 (2001).

determination of appellant's impairment rating will be set aside. The case will be remanded to the Office for further development to determine the degree of impairment of appellant's upper right extremity.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: May 13, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member