

finger release on December 13, 1988. On October 3, 1989 appellant underwent a trigger finger release on her right fourth (little) finger.²

In a June 7, 2001 report, Dr. David Weiss, an orthopedist, provided findings on physical examination and determined that appellant had 24 percent impairment of the little finger (two percent of the upper extremity) for decreased distal interphalangeal (DIP) joint flexion range of motion of 25 degrees, based on Figure 16-21 at page 461 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*) (5th ed. 2001), 7 percent of the upper extremity, each, for constrictive tenosynovitis of the right ring finger and right middle finger, based on Tables 16-29 and 16-18 at pages 507 and 499,³ and 10 percent impairment for right grip strength deficit, based on Tables 16-32 and 16-34 at page 509. He stated that appellant had a 24 percent combined impairment of the upper extremity.

On May 16, 2002 appellant submitted a claim for a schedule award.

In an October 15, 2002 report, Dr. M.F. Quinlan, the district medical director, stated that the only accepted condition was trigger finger of the right ring finger and appellant had a seven percent impairment of that finger based on the report of Dr. Weiss. He noted that loss of grip strength could not be included with an impairment rating that was based on restricted motion, pain or deformities according to page 508 of the fifth edition of the A.M.A., *Guides*.

By decision dated October 18, 2002, the Office granted appellant a schedule award for 1.75 weeks,⁴ for the period May 25 to June 6, 2001, for a seven percent permanent impairment of the right ring finger.

Appellant requested an oral hearing that was held on October 22, 2003.

By decision dated January 16, 2004 and finalized on January 20, 2004, an Office hearing representative set aside the October 18, 2002 decision and remanded the case for further development. She instructed the Office to prepare a statement of accepted facts indicating that the Office had accepted appellant's right little finger surgery on October 3, 1989 as causally related to the August 22, 1988 employment injury⁵ and that the Office had also accepted a 1984 injury of the right ring finger. The hearing representative directed the Office to request that the medical director provide a reasoned opinion on the percentage of appellant's work-related

² In a November 30, 1989 report, Dr. John D. Caggiano indicated that appellant had developed trigger finger in her right little finger, which was related to the trigger finger condition in her right ring finger and required surgery.

³ Dr. Weiss noted that appellant had ongoing triggering of the right ring finger and tenosynovitis of the right middle, ring and little fingers.

⁴ The Federal Employees' Compensation Act provides for 25 weeks of compensation for 100 percent loss or loss of use of the third finger. 5 U.S.C. § 8107(c)(10). Multiplying 25 weeks by a 7 percent impairment equals 1.75 weeks of compensation.

⁵ The Office did not issue a formal acceptance of the right little finger condition. However, it paid appellant, under the August 22, 1988 claim, compensation for lost wages from October 3, 1989, the date of the right little finger surgery, to October 19, 1989.

permanent impairment, considering all accepted conditions and surgeries and an opinion as to whether the impairment of her fingers extended into her hand or upper extremity.

In a February 20, 2004 memorandum, Dr. Quinlan indicated that appellant's schedule award should be based on impairment of the hand since the Office had accepted injuries to two fingers.⁶ He stated:

"Dr. Weiss [on July 21, 2001] found no triggering during his exam[ination], so [seven] percent rating is reasonable. The grip strength would not be included. A.M.A., *Guides* [fifth edition] [page] 508 precludes a separate rating for strength in [the] presence of [pain] or decreased motion -- otherwise rated by the DBE [diagnosis-based estimate portion of the A.M.A., *Guides*]."

Dr. Quinlan determined that appellant had a two percent permanent impairment of the right hand, including one percent each for the right ring finger and right little finger, based on Table 16-1 at page 438 of the fifth edition of the A.M.A., *Guides*.

By decision dated March 3, 2004, the Office granted appellant a schedule award for 3.13 weeks (4.88 weeks less the 1.75 weeks of compensation previously paid) for the period June 7 to 28, 2001, for a two percent permanent impairment of the right hand.⁷

Appellant requested a hearing that was held December 1, 2004.

In a January 3, 2005 report, Dr. Weiss indicated that he had amended his July 21, 2001 impairment rating of seven percent for appellant's right ring finger, due to constrictive tenosynovitis, to a two percent impairment of the right hand which equaled a two percent impairment of the right upper extremity. He stated:

"The trigger [finger condition] is rated at 20 percent of digit impairment according to Table 16-29, which would be multiplied by the hand impairment on Table 16-18 under the ring and little finger of 10 percent. The impairment rating for the right middle finger would be 8 percent of the hand, which equals 7 percent of the upper extremity. Again, this is rated by using Table 16-29, page 507, consistent with moderate constant triggering during active range of motion, which would equal 40 percent of the digit and multiplying it by Table 16-18, under the middle finger, entire finger percent of the hand [is] 20 percent.

"I would agree with the [district medical director] that the grip strength deficit may not be used due to [a] lack of range of motion deficit of the digits.

⁶ The Act provides that "Compensation for loss of use of two or more digits or one or more phalanges of each of two or more digits, of a hand or foot, is proportioned to the loss of use of the hand or foot occasioned thereby." 5 U.S.C. § 8107(c)(17). See also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(a) (June 2003); A.M.A., *Guides*, fifth edition, 465, section 16.4f "Multiple Digit Impairments."

⁷ The Act provides for 244 weeks of compensation for 100 percent loss or loss of use of the hand. 5 U.S.C. § 8107(c)(3). Multiplying 244 weeks by a two percent impairment equals 4.88 weeks of compensation.

“The amended right upper extremity rating for [appellant] would be as follows:

“Two percent for the right ring finger [plus] 7 percent right middle finger [plus] 2 percent right little finger, which would give a combined upper extremity impairment of 11 percent [plus] 3 percent [for] pain ... for a total of 14 percent for the total combined right upper extremity impairment. The pain[-]related impairment would be according to page 574, Figure 18-1.”

By decision dated February 9, 2005, the Office hearing representative affirmed the March 3, 2004 decision.

LEGAL PRECEDENT

Section 8107 of the Act⁸ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as “permanent impairment.” 20 C.F.R. § 10.404 provides for compensation for loss or loss of use of additional scheduled members or functions of the body. 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 regulations as the appropriate standard for evaluating schedule losses.⁹ Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.¹⁰

ANALYSIS

The Board finds that this case is not in posture for a decision and requires further development of the medical evidence.

In a June 7, 2001 report, Dr. Weiss determined that appellant had a two percent impairment of the upper extremity for decreased DIP joint flexion range of motion of the right little finger, based on Figure 16-21 at page 461 of the A.M.A., *Guides*, a 7 percent impairment of the upper extremity, each, for constrictive tenosynovitis of the right ring finger and right middle finger, based on Tables 16-29 and 16-18 at pages 507 and 499 and a 10 percent impairment of the right upper extremity for right grip strength deficit according to Tables 16-32 and 16-34 at page 509. He indicated that appellant had a 24 percent combined impairment of the upper extremity according to the Combined Values Chart at page 604 of the A.M.A., *Guides*. In reviewing Dr. Weiss’ report, Dr. Quinlan stated that the only accepted condition was trigger finger of the right ring finger and appellant had a seven percent impairment of that finger based on the report of Dr. Weiss. However, Dr. Weiss had indicated that appellant had a seven percent impairment of the upper extremity, not the finger.

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

The Office hearing representative properly remanded the case for further development on January 20, 2004 for a determination as to whether the impairment of appellant's fingers extended into her hand or upper extremity.¹¹

It is unclear how Dr. Weiss determined the seven percent impairment based on Table 16-29 at page 507 and Table 18-18 at page 499, as he indicated. Table 16-29 provides for a 20 percent impairment of the finger for mild constrictive tenosynovitis, 40 percent for moderate constrictive tenosynovitis and 60 percent for severe constrictive tenosynovitis. Hand impairment is determined by multiplying the applicable percentage from Table 16-29 by the relative hand value of the digit from Table 16-18. The relative hand value of the ring and little fingers is 10 percent of the hand according to Table 16-18. Multiplying the 20 percent, 40 percent and 60 percent impairments in Table 16-29 by the 10 percent relative hand value of the ring or little finger results in a 2 percent, 4 percent and 6 percent impairment, respectively.¹²

In a February 20, 2004 memorandum, Dr. Quinlan found that appellant's schedule award should be based on impairment of the hand since the Office had now accepted injuries to two fingers. He correctly noted that grip strength would not be included in an impairment rating because the A.M.A., *Guides*, at page 508, precludes a separate rating for strength in the presence of pain or decreased range of motion. Dr. Quinlan stated: "Dr. Weiss ... found no triggering during his exam[ination], so [seven] percent rating is reasonable." However, he did not explain, with reference to applicable sections of the A.M.A., *Guides*, how he determined that a seven percent impairment of the finger was appropriate. If appellant had a seven percent impairment of the ring and little fingers, then Dr. Quinlan would be correct in finding that appellant had a two percent permanent impairment of the right hand, including one percent each for the ring finger and little finger, based on Table 16-1 at page 438 of the A.M.A., *Guides*. However, he did not explain how he determined the seven percent impairment of the ring and little fingers. Therefore, Dr. Quinlan's report is not sufficient to establish the degree of appellant's permanent work-related impairment and the Office hearing representative erred in affirming, in his February 9, 2005 decision, the March 3, 2004 schedule award decision.

On January 3, 2005 Dr. Weiss amended his prior impairment rating of seven percent for appellant's right ring finger, due to constrictive tenosynovitis, to a two percent impairment of the right hand which equaled a two percent impairment of the right upper extremity. However, he did not explain the basis for making the impairment estimate to the upper extremity, the larger member, rather than the hand. Furthermore, Dr. Weiss did not explain why his earlier report indicated a seven percent impairment of the right upper extremity, while his January 3, 2005 report indicate a seven percent impairment of the finger. He found that appellant had a 4 percent impairment of the right upper extremity for constrictive tenosynovitis, which included a 20 percent (mild) impairment of the right ring finger and right little finger according to Table 16-29, which, when multiplied by the relative hand impairment of 10 percent in Table 16-18, equals a 2 percent impairment of the hand based on each finger. Dr. Weiss added a three percent

¹¹ See *Asline Johnson*, 42 ECAB 619 (1991).

¹² In his January 3, 2005 report, Dr. Weiss indicated that his June 7, 2001 report included a seven percent impairment for appellant's right ring finger. However, Dr. Weiss clearly indicated a seven percent impairment rating for the upper extremity in his June 7, 2001 report, not the finger.

impairment of the right upper extremity for pain based on page 574, Figure 18-1. However, the Office's procedure manual provides that Chapter 18 should not be used to rate pain-related impairment for any condition that can be adequately rated on the basis of the impairment rating systems given in other chapters of the A.M.A., *Guides*.¹³ Dr. Weiss did not address how the impairment rating system in Chapter 16 of the A.M.A., *Guides*, regarding the upper extremity, was not adequate to encompass appellant's pain-related impairment. Due to these deficiencies, the January 3, 2005 report of Dr. Weiss is not sufficient to establish the degree of appellant's permanent impairment.

The Board finds that the medical evidence in this case was not based on a proper application of the A.M.A., *Guides*. Therefore, the case will be remanded for further development of the medical evidence.

On remand, the Office should refer appellant to an appropriate medical specialist, together with an accurate statement of accepted facts for a thorough examination and evaluation of appellant's permanent impairment, with reference to the relevant sections of the A.M.A., *Guides*, fifth edition. After such further development as it deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for a decision and must be remanded for further development on the issue of appellant's permanent impairment.

¹³ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); see also A.M.A., *Guides*, fifth edition, 570-72.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 9, 2005 is set aside and the case is remanded for action consistent with this decision.

Issued: September 14, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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