

certified in orthopedic surgery. On July 4, 2001 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left hand.

In an impairment evaluation dated October 24, 2001, Dr. Milek found that appellant had an interphalangeal joint motion of 60 degrees; metacarpal active flexion to 30 degrees; carpometacarpal (CMC) active flexion to 20 degrees; and CMC extension to 35 degrees. He stated that the impairment secondary to the left thumb due to the resection arthroplasty was 11 percent to the upper extremity, which was equivalent to a 30 percent impairment of the function to the thumb.

In an impairment evaluation dated November 23, 2001, an Office medical adviser rated appellant at an 11 percent impairment for a CMC resection arthroplasty under Table 16-27 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) [the A.M.A., *Guides*]. He found that appellant had a 30 percent impairment of the left thumb, which was equivalent to a 12 percent impairment of the left hand pursuant to the A.M.A., *Guides*.

On December 19, 2001 the Office granted appellant a schedule award for a 30 percent permanent impairment of the left hand for the period November 2, 2001 to May 25, 2002, for a total of 29.28 weeks of compensation.

By letter dated January 3, 2002, appellant requested reconsideration of the December 19, 2001 schedule award decision. He contended that a 30 percent schedule award entitled him to a greater number of weeks of compensation than that granted by the Office in its December 19, 2001 decision. Appellant submitted form reports from Dr. Milek dated October 13, 1997, April 2, 1998 and August 21, 2001 which stated findings on examination pertaining to appellant's left thumb and reiterated his previous opinion.

By decision dated January 16, 2002, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision. The Office corrected an error in its December 19, 2001 schedule award, stating that the 29.28 weeks of compensation awarded to appellant were for a 12 percent permanent loss of use of the left hand, rather than 30 percent impairment. The Office issued an amended schedule award on January 16, 2002 reflecting a 12 percent permanent impairment of the left hand for the period November 2, 2001 to May 25, 2002, for a total of 29.28 weeks of compensation.

On September 24, 2003 appellant filed a Form CA-7 claim for an additional schedule award based on a partial loss of use of his left hand.

By decision dated July 21, 2004, the Office found that appellant did not have impairment greater than the 12 percent award for the left hand already awarded.

On August 2, 2004 appellant requested a hearing. He submitted an August 15, 2004 report from Dr. Lloyd A. Walwyn, a Board-certified orthopedic surgeon. Based on section 1.5, page 10 of the A.M.A., *Guides*, Dr. Walwyn stated that appellant had upper extremity impairment of 6 percent to each upper extremity, in addition to a 39 percent strength loss index

due to Jamar testing, which translated to an upper extremity impairment of 20 percent. He rated a two percent impairment of the left thumb for the hand due to loss of motion, which was equivalent to a one impairment of the hand pursuant to Tables 16-1, 16-2, and 16-3 at pages 438 and 439. Dr. Walwyn combined these totals to find a 32 percent combined value impairment for both upper extremities.

By decision dated April 14, 2005, an Office hearing representative set aside the July 21, 2004 decision and remanded for further development of the medical evidence. He noted that Dr. Walwyn had provided findings regarding additional impairment causally related to appellant's accepted left hand condition for loss of grip strength and that no previous examiner had considered an impairment based on loss of strength. The Office was instructed to refer the case to the Office medical adviser to consider Dr. Walwyn's report and determine appellant's entitlement to an additional schedule award for his left hand.

In a report dated June 17, 2005, the Office medical adviser stated that, pursuant to Table 17-2 of the A.M.A., *Guides*, an impairment due to a diagnosis-based estimate (resection arthroplasty) cannot be added to any impairments based on gait derangement, muscle atrophy, muscle strength (loss), range of motion loss or ankylosis. Based on this section of the A.M.A., *Guides*, therefore, the Office medical adviser found that appellant was not entitled to an increased impairment rating for the left hand based on Dr. Walwyn's report.

By decision dated June 29, 2005, the Office found that appellant was not entitled to an additional schedule award greater than the 12 percent award for the left hand already awarded.

By letter dated July 20, 2005, appellant requested reconsideration. He contended that he was entitled to an additional award due to the pain in his left hand. Appellant also argued that the A.M.A., *Guides* were merely guidelines and that the Office was not required to render impairment findings based on its provisions.

By decision dated September 14, 2005, the Office denied modification of the June 29, 2005 Office decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ 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

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS

The Office found appellant had a 12 percent impairment of the left hand based on the Office medical adviser's November 23, 2001 report. The Office medical adviser rated appellant at an 11 percent impairment for his September 8, 1997 CMC resection arthroplasty in accordance with Table 16-27 of the A.M.A., *Guides* (fifth edition). The Office granted appellant a schedule award for a 12 percent impairment of the left hand. The Board notes, however, that the chart at Table 16-27 accords an 11 percent award for a resection of the upper extremity -- not the hand. Since a total upper extremity impairment under section 8107(c)(1) would entitle appellant to an award for 312 weeks, appellant is therefore entitled to compensation based on 11 percent of 312 weeks, or a total of 34 weeks. Thus, the amount of weeks of compensation the Office granted appellant, 29, is increased to 34 weeks.

In all other respects, the award is affirmed. Appellant requested reconsideration and submitted the 2004 report of Dr. Walwyn, who rated an additional 32 percent impairment for both upper extremities due to impairment of 6 percent to each upper extremity based on his left hand, a 20 percent impairment due to strength loss and a 2 percent impairment of the left thumb for the hand due to loss of motion.⁴ The Office medical adviser reviewed Dr. Walwyn's report and found it was not sufficient to support an increase in appellant's schedule award. The Office medical adviser correctly determined that the Table 17-2 of the A.M.A., *Guides* expressly prohibited an award for impairments based on muscle atrophy, muscle strength (loss), range of motion loss or ankylosis in combination with an impairment due to a diagnosis-based estimate (resection arthroplasty).⁵

As the Office medical adviser properly relied on the applicable section of the A.M.A., *Guides*, the Board will affirm the June 29, 2005 Office decision, as modified.

Following the June 29, 2005 decision, appellant requested reconsideration but did not submit any additional medical evidence. Therefore, as there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment.

³ 20 C.F.R. § 10.404.

⁴ The Board notes that Dr. Walwyn rendered a six percent impairment rating for both upper extremities pursuant to section 1.5 of the A.M.A., *Guides*. This section, however, merely sets out general principles for evaluating impairments and does not discuss specific factors pertaining to an impairment rating based on the upper extremities. In addition, Dr. Walwyn submitted a rating for both upper extremities despite the fact that the Office only accepted a condition based on appellant's left thumb.

⁵ See *James R. Taylor*, 56 ECAB ____ (Docket No. 05-135 issued May 13, 2005). In this case, the Board held that the principle enunciated in Table 7.2 for not combining these awards in lower extremity impairments also applies to upper extremity impairments.

CONCLUSION

The Board finds that appellant has no more than an 11 percent impairment to his left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the September 14 and June 29, 2005 decisions of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: August 23, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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