

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

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**C.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Pittsburgh, PA, Employer**

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**Docket No. 06-1341  
Issued: November 20, 2006**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 26, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated April 4, 2006 granting appellant a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award issue.

**ISSUE**

The issue is whether appellant has more than a nine percent permanent impairment of the right index finger, for which she received a schedule award.

**FACTUAL HISTORY**

On January 3, 2003 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim alleging that she injured her right hand on January 2, 2003, while lifting a tub of mail. The Office accepted her claim for a right hand sprain and paid appropriate benefits. In letters dated October 21, 2004 to May 14, 2005, appellant requested a schedule award.

In a September 21, 2004 impairment rating, Dr. George Rodriguez, Board-certified in physical medicine and rehabilitation, noted the history of injury, appellant's medical course of treatment and her current complaints. He evaluated the right upper extremity and reported a full range of motion for the joints of the right thumb and right index finger, noted areas of tenderness and found no evidence of joint instability or effusion. He opined that her right hand sprain 2<sup>nd</sup> Digit with a partial thickness tear volar ligament at metacarpophalangeal (MCP) joint, flexor tenosynovitis of the right hand and chronic activity-related right hand pain were secondary to the January 2, 2003 injury. He listed appellant's condition as moderate, noted that she was in Stage 1 rehabilitation and provided work restrictions. Dr. Rodriguez stated that maximum medical improvement was reached on or about December 31, 2003. He opined that appellant had a two percent right upper extremity impairment due to pain under section 18.3d(c), pages 573 and 575 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a December 1, 2004 report, Dr. A. Lee Osterman, a Board-certified orthopedic surgeon, opined that appellant's right index stenosing tenosynovitis was exacerbated by a recent injury in March 2004, when someone struck her right index finger. Dr. Osterman provided range of motion findings for the digits of the hand and measurements of lateral and key pinch strength using a Jamar dynamometer. Range of motion findings for the right index finger were: MCP joint +5-90 degrees, proximal interphalangeal (PIP) joint 0-120 degrees and distal interphalangeal (DIP) joint 0-60 degrees. Dr. Osterman stated that, although it was likely that appellant's condition would resolve, it required continued observation, cortisone injection, splinting and surgical release. He noted that appellant opted to continue with her work restrictions.

By decision dated June 22, 2005, the Office denied appellant's claim for a schedule award on the basis that Dr. Osterman's report supported a finding that her condition had not reached maximum medical improvement.

In a letter dated June 23, 2005, appellant, through her attorney, requested reconsideration. She alleged that the Office failed to consider the impairment rating of Dr. Rodriguez.

On January 23, 2006 Dr. Arnold T. Berman, the Office medical adviser, noted that appellant continued to be symptomatic and required work restrictions at the time of Dr. Rodriguez' September 21, 2004 and Dr. Osterman's December 1, 2004 examinations. Dr. Osterman advised that appellant needed to continue treatment. The Office medical adviser recommended that the date of maximum medical improvement should be December 1, 2004, as appellant had received no further treatment, continued limited-duty and rejected any further treatment for her right index finger.

In reports dated December 13, 2005 and January 10, 2006, Dr. Rodriguez noted appellant's complaints of pain, areas of moderate tenderness and provided Jamar grip strength values. In a November 9, 2005 report, Dr. Osterman noted that appellant had no recent treatment and listed the following range of motion findings of the index finger: (metatarsophalangeal) MP joint 0 to 80 degrees, PIP joint 0 to 95 degrees and DIP joint 0 to 45 degrees. Key pinch, tip pinch and Jamar grip strength testing were also provided.

In a February 26, 2006 report, Dr. Morley Slutsky, an Office medical adviser, noted that Dr. Rodriguez assigned a two percent digit impairment based upon pain on September 21, 2004. Dr. Slutsky opined that, since Dr. Rodriguez did not document the range of motion values he probably did not use a goniometer to measure finger range of motion. Dr. Slutsky stated that Dr. Osterman appeared to have used a goniometer, hand Jamar dynamometer and measured lateral and key pinch strength. Dr. Osterman presented a more thorough evaluation would be used to determine an impairment rating. Under the fifth edition of the A.M.A., *Guides*, Dr. Slutsky opined that appellant had nine percent right index finger digit impairment. Under Figure 16-25, page 464, MCP joint extension of +5 degrees represented 4 percent impairment and MCP joint flexion of 90 degrees was 0 percent impairment. Under Figure 16-23, page 463, PIP joint extension of 0 degrees and flexion of 120 degrees was 0 percent digit impairment. Under Figure 16-21, page 461, DIP joint extension of 0 degrees represented 0 percent digit impairment while 60 degrees of flexion was a 5 percent digit impairment. The Office medical adviser noted that, while appellant had reduced pinch strength, the A.M.A., *Guides* at section 16.a, page 508, preclude the measurement of decreased strength in the presence of reduced range of motion and pain as maximal application of force can not be effectively evaluated. Dr. Slutsky opined that appellant had a nine percent right index digit impairment based on loss of range of motion.

By decision dated April 4, 2006, the Office granted appellant a schedule award for a nine percent permanent impairment of her right index finger for the period December 1 to 29, 2004, a total of 4.14 weeks of compensation.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> sets 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.<sup>3</sup>

### **ANALYSIS**

Dr. Slutsky, an Office medical adviser, reviewed the medical evidence of record to determine that the reports of Dr. Osterman provided range of motion findings on which to base an impairment rating. Dr. Rodriguez had reported a full range of motion and allowed a two percent impairment rating based on pain under Chapter 18.3(d). However, the Office has determined that Chapter 18 should not be used to rate pain-related impairments for conditions

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> See *id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

that can be rated under other chapters of the A.M.A., *Guides*.<sup>4</sup> Dr. Rodriguez did not explain why pain to appellant's fingers could not be rated under the protocols set forth in Chapter 16.

In analyzing Dr. Osterman's December 1, 2004 report, the Office medical adviser found that appellant had nine percent impairment to her right index finger under the A.M.A., *Guides*. This was derived by adding the loss of ranges of motion for the MP, PIP and DIP joints. Pursuant to Figure 16-25,<sup>5</sup> impairment due to abnormal motion of the MCP joint are rated from a range from +20 degrees to 90 degrees. A +5 extension represents 4 percent impairment and 90 degrees flexion is 0 percent impairment. Pursuant to Figure 16-23,<sup>6</sup> impairment due to abnormal motion of the PIP joint, 0 degrees extension is 0 percent impairment and 120 degrees flexion is 0 percent impairment. Pursuant to Figure 16-21,<sup>7</sup> impairment due to abnormal motion at the DIP joint, 0 degrees extension is 0 percent impairment and 60 degrees flexion is 5 percent impairment. The total loss of range of motion results in nine percent impairment. The medical adviser properly noted that Dr. Osterman measurements indicated that reduced pinch strength were not a basis for making an impairment finding since, under section 16.8a of the A.M.A., *Guides*,<sup>8</sup> impairment for weakness should not be combined with impairment based on reduced range of motion.

The Board notes, however, that Dr. Slutsky did not address Dr. Osterman's November 9, 2005 report. The report suggests that appellant may have greater than a nine percent permanent impairment of the right index finger. Dr. Osterman's report recorded range of motion findings reflecting additional impairment. Pursuant to Figure 16-25,<sup>9</sup> impairment due to abnormal motion of the MCP joint, 0 degrees extension is 5 percent impairment and 80 degrees flexion is 6 percent impairment. Pursuant to Figure 16-23,<sup>10</sup> impairment due to abnormal motion of the PIP joint, 0 degrees of extension is 0 percent impairment and 95 degrees flexion is 3 percent impairment. Pursuant to Figure 16-21,<sup>11</sup> impairment due to abnormal motion at the DIP joint, 0 degrees of extension is 0 percent impairment and 45 degrees flexion is 13 percent impairment. Dr. Slutsky did not address or compare the range of motion findings in Dr. Osterman's December 1, 2004 report to the November 9, 2005 report. Accordingly, the case will be remanded to the Office to have Dr. Slutsky review the medical evidence and to clarify, as appropriate, whether appellant has any additional permanent impairment.

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<sup>4</sup> See FECA Bulletin 01-05, issued January 29, 2001.

<sup>5</sup> A.M.A., *Guides* 464, Figure 16-25.

<sup>6</sup> A.M.A., *Guides* 463, Figure 16-23.

<sup>7</sup> A.M.A., *Guides* 461, Figure 16-21.

<sup>8</sup> A.M.A., *Guides* 508, section 16.8a.

<sup>9</sup> See *supra* note 5.

<sup>10</sup> *Supra* note 6.

<sup>11</sup> *Supra* note 7.

The Board notes that the February 7, 2006 report of Dr. Rodriguez addressed appellant's symptomology. However, there were no range of motion findings or other objective findings provided from which to rate impairment under the A.M.A., *Guides*.

**CONCLUSION**

The Board finds that the case is not in posture for decision. The case is remanded for further consideration of the medical evidence to be followed by an appropriate decision on appellant's claim for a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 4, 2006 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further development consistent with this decision.

Issued: November 20, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board