

FACTUAL HISTORY

This is the second appeal in this case.¹ By decision dated September 14, 2005, the Board set aside a February 9, 2005 Office decision and remanded the case for further development of the medical evidence. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

On December 13, 2005 the Office referred appellant, together with a statement of accepted facts and a list of questions, to Dr. Robert Draper, a Board-certified orthopedic surgeon, for an impairment rating of her right hand. The statement of accepted facts provided to Dr. Draper failed to include the fact that the Office had accepted trigger finger of appellant's right little finger, in addition to her right ring finger.

In a December 29, 2005 report, Dr. Draper reviewed appellant's medical history and provided findings on physical examination. He diagnosed tenosynovitis of the right ring finger and little finger, status post release of the right ring finger for trigger finger in 1988 and status post release of the right little finger for trigger finger in 1989. Dr. Draper noted appellant's statement that the Office had accepted trigger finger of her right little finger, in addition to trigger finger of her right ring finger "but I don't have proof of that." He stated:

"Examination of the right hand reveals that [appellant] has very well-healed incisions over the hand involving the ring finger and the little finger of the right hand.... Tinel's sign is negative over the median and ulnar nerve of the right wrist and right elbow. Normal light touch sensation is noted over the index finger and the little finger of the right hand. The grip strength is +5/5 to the right hand. There is triggering of the fingers today. There are nodules present over the flexor tendons for the ring finger and the little finger which can be palpated in the palm of the right hand without triggering."

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"I did not really find any loss of strength, atrophy, ankylosis or sensory changes at all in the right hand. The subjective complaints were of discomfort in the right hand."

Dr. Draper found that appellant had a 10 percent permanent impairment of her right ring finger or a 2 percent impairment of the right upper extremity, based on Table 16-29, (Digit Impairment Due to Constrictive Tenosynovitis, (trigger fingers) at page 507 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.² Dr. Draper noted that appellant had less than a mild inconsistent triggering during active range of motion. On March 16, 2006 Dr. Morley Slutsky, an Office medical adviser, reviewed Dr. Draper's

¹ See Docket No. 05-1388 (issued September 14, 2005). On August 22, 1988 appellant, then a 56-year-old nursing assistant, sustained trigger finger of her right ring finger when she lifted a bag of laundry. She underwent a trigger finger release of the right ring finger on December 13, 1988. The Office subsequently accepted trigger finger of appellant's right little finger.

² A.M.A., *Guides* (5th ed. 2001).

December 29, 2005 report and agreed with his assessment that appellant had a two percent impairment of her right hand.

By decision dated March 20, 2006, the Office denied appellant's claim for an additional schedule award. The Office stated that the December 29, 2005 report from Dr. Draper established that appellant had no more than a two percent impairment of her right hand for which she had previously received a schedule award.

On March 21, 2006 appellant requested an oral hearing that was held on July 31, 2006. By decision dated November 6, 2006, the Office hearing representative affirmed the March 20, 2006 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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.⁵

It is well established that, in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, the percentage of impairment should include those conditions accepted by the Office as job related and any preexisting permanent impairment of the same member or function.⁶

ANALYSIS

Dr. Draper diagnosed tenosynovitis of appellant's right ring and little fingers, status post release of the right ring finger for trigger finger in 1988 and status post release of the right little finger for trigger finger in 1989. He found that appellant had a 10 percent permanent impairment of her right ring finger, or a 2 percent impairment of her right upper extremity, based on Table 16-29 at page 507 of the A.M.A., *Guides*. Dr. Draper noted appellant's statement that the Office had accepted the condition of trigger finger of her right little finger, in addition to trigger finger of her right ring finger but he stated, "I do n[o]t have proof of that." The statement of accepted facts provided to him failed to mention that the Office had accepted trigger finger of appellant's right little finger. The Board finds that Dr. Draper's impairment rating of her right hand is not based on a complete and accurate factual background. Because he did not consider

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides* (5th ed. 2001).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (October 1990).

appellant's trigger finger of her right little finger in his impairment rating his report is not sufficient to establish the extent of her right hand impairment.

On remand the Office should refer appellant for an examination and evaluation of her right hand permanent impairment, with reference to applicable 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. The case will be remanded for further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 6, 2006 is set aside and the case remanded for further action consistent with this decision.

Issued: November 6, 2007
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