United States Department of Labor
Employees' Compensation Appeals Board

S.D., Appellant	)	
and	)	**Docket No. 07-1705**
	)	**Issued: January 9, 2008**
U.S. POSTAL SERVICE, ANACOSTIA STATION, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 12, 2007 appellant filed a timely appeal from an August 30, 2006 merit decision of the Office of Workers' Compensation Programs granting her a schedule award and an April 18, 2007 hearing representative's decision affirming the schedule award as modified. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decisions.

ISSUE

The issue is whether appellant has more than an 80 percent permanent impairment of her left middle finger.

FACTUAL HISTORY

On December 6, 2002 appellant, then a 37-year-old letter carrier, filed a claim alleging that she sustained a paper cut to the middle finger of her left hand on that date in the performance of duty. The Office accepted her claim for a left middle finger laceration, cellulitis of the left

hand, abscess formation, destruction and amputation of the proximal interphalangeal (PIP) joint of the left middle finger and a depressive disorder.

On January 20, 2004 appellant underwent surgery to repair a severe flexion contracture of the left middle finger.[1] On February 4, 2004 Dr. Craig M. Person, a Board-certified plastic surgeon, amputated appellant's left middle finger at the PIP joint and divided the cross finger flap between the index and middle fingers. Appellant stopped work on January 20, 2004 and returned to her regular full-time employment on April 4, 2005.

On May 19, 2005 appellant filed a claim for a schedule award. On June 30, 2005 the Office requested that her attending physician provide an opinion on the extent of any permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). Appellant submitted an impairment evaluation dated July 25, 2005 from Dr. Person who described her complaints of pain, loss of sensation and cold sensitivity in the remaining portion of her finger.[2] Dr. Person stated:

> "On examination, [appellant] is noted to have the amputation level at the PIP joint. The skin covering is somewhat tight over the end of the proximal phalanx. There is tenderness to palpation of the distal portion of the stump. Distal two-point discrimination is noted at greater than 15 [millimeters] statically on the remaining portion of the finger. Active range of motion of the MCP [metacarpophalangeal] joint reveals 0 to 90 degrees. Serial grip strength measurements performed with a Jamar dynamometer average to 85 pounds in the right hand versus 59 pounds in the left hand. This gives a strength loss index of 31 [percent]."

Dr. Person opined that appellant had reached maximum medical improvement. He stated:

> "[Appellant's] permanent impairment is due to the amputation of the finger at the PIP joint, the total transverse sensory loss of the remaining portion of the finger, the moderate decrease in grip strength of the left hand as well as pain, lack of endurance, and loss of function. The impairment ratings for amputation are found using the [A.M.A., *Guides*]. Table 16-5, elucidates the 80 percent impairment due to the amputation level at the PIP joint. The total transverse sensory loss is given at 50 by [T]able 16-7. The rating for the range of motion of the MP joint is determined using figure 1-25. In addition, the determination for deficit from grip strength is alluded to using serial grip strength measurements as well as [T]able 16-34."

He concluded that appellant had a 16 percent upper extremity impairment due to her amputation, sensory loss and decreased range of motion at the MCP joint and a 20 percent upper

[1] Appellant previously underwent surgery to control the infection of her left middle finger, which resulted in the flexion contracture.

[2] The report is dated July 25, 2004; however, it is apparent that this is a typographical error.

extremity impairment due to loss of grip strength, pain, loss of endurance and loss of function, for a combined 33 percent impairment of the left upper extremity.

On January 18, 2006 an Office medical adviser reviewed Dr. Person's impairment evaluation.[3] He found that, according to the A.M.A., *Guides*, appellant had an 80 percent impairment for amputation of the middle finger at the PIP joint, or an 8 percent impairment of the hand.[4] The Office medical adviser concluded that there could not be a 50 percent loss of sensation of the finger as it was amputated at the PIP joint. He asserted, "When an amputation occurs, that is the basis for the impairment rating."

On August 14, 2006 the Office received a worksheet from the A.M.A., *Guides* completed by Dr. Person providing his calculation of a 33 percent upper extremity impairment.

By decision dated August 30, 2006, the Office granted appellant a schedule award for an eight percent permanent impairment of the right hand. The period of the award ran for 20 weeks from February 4 to July 21, 2005. The Office found that she reached maximum medical improvement on February 4, 2004.

On September 8, 2006 Dr. Person disagreed with the Office medical adviser's statement that the amputation was the only basis for an impairment rating. He stated:

> "Many patients will sustain an amputation at the PIP joint level and have no other significant problems. That is they will not have decreased range of motion at the MCP joint, and they will not have appreciable grip strength loss…. In [appellant's] case, I have clearly documented in my notes that she does have decreased range of motion of the MCP joint as well as a persistent level of pain at the stump, which interferes with some of her activities of daily living. This is also contributed to a weakness that has been described and calculated as per the A.M.A., *Guides*."

Dr. Person noted that the A.M.A., *Guides* indicated that "one must take into account the other factors that accompany an amputation of [the] finger at the PIP joint level." He related that he would alter his impairment rating to reflect that she has a 20 percent impairment due to sensory loss of the finger. Dr. Person found that appellant had a 71 percent impairment of the finger or a 14 percent impairment of the hand and a 13 percent impairment of the upper extremity. Dr. Person combined the 13 percent impairment with the previously determined 20 percent upper extremity impairment due to pain, loss of grip strength and loss of endurance to find a 30 percent upper extremity impairment.

Appellant requested reconsideration on January 11, 2007. She contended that the Office failed to consider her loss of use of the hand, disfigurement and mental anguish.

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[3] The Office medical adviser indicated that appellant could not have reached maximum medical improvement at the time of Dr. Person's July 25, 2004 impairment evaluation as it was less than a year from her surgery. As noted above, however, the physician's evaluation was on July 25, 2005 rather than July 25, 2004.

[4] A.M.A., *Guides* 440, Table 16-4.

By decision dated April 18, 2007, the Office modified its August 30, 2006 decision to reflect that appellant was entitled to a schedule award for an 80 percent impairment of her left middle finger. The Office determined that the period of the award was 24 weeks. The Office further found that appellant reached maximum medical improvement on February 4, 2005. The Office noted that Dr. Person's finding that she had a 30 percent left upper extremity impairment was not supported by specific citations to the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,[5] and its implementing federal regulation,[6] 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 for all claimants, the Office has adopted the A.M.A., *Guides* (5th ed. 2001) as the uniform standard applicable to all claimants.[7] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[8]

Regarding loss of strength, the A.M.A., *Guides* states in relevant part:

> "In a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the [A.M.A.,] *Guides*, the loss of strength may be rated separately. An example of this situation would be loss of strength due to a severe muscle tear that healed leaving a palpable muscle defect. If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.* Decreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (*e.g.* thumb amputation) that prevent effective application of maximal force in the region being evaluated."[9] (Emphasis in the original.)

Regarding amputations, the A.M.A., *Guides* states:

> "Important factors to consider in evaluating amputations include not only the level of occurrence but also the presence of associated problems relating to the

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] 20 C.F.R. § 10.404(a).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[9] A.M.A., *Guides* 508.

condition of the residual stump ([s]ection 16.2d), to regional or central pain syndromes, and to restriction or loss of motion of existing proximal joints ([s]ection 16.4)."[10]

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[11]

ANALYSIS

The Office accepted that appellant sustained a laceration, cellulitis, abscess formation and amputation of the PIP joint of the left middle finger due to a December 6, 2002 employment injury. On February 4, 2004 Dr. Person amputated her left middle finger at the PIP joint. On May 19, 2005 appellant filed a claim for a schedule award. In a report dated July 25, 2005, Dr. Person found that she had an 80 percent impairment of the left middle finger according to Table 16-5 on page 447 of the A.M.A., *Guides*. He further found that appellant had a 50 percent impairment of the finger due to loss of sensation utilizing Table 16-7 on page 448 of the A.M.A., *Guides*. In a supplemental report dated September 8, 2006, Dr. Person modified his sensory loss finding to reflect that appellant had a 20 percent impairment due to sensory loss of the remaining portion of the finger. He determined that she had a 16 percent impairment of the left middle finger due to loss of range of motion of the MCP joint according to Figure 16-25 on page 464. Dr. Person utilized Table 16-34 on page 509 of the A.M.A., *Guides* to find that appellant had a 20 percent impairment of the upper extremity due to loss of grip strength. The A.M.A., *Guides*, however, precludes the use of an impairment rating for decreased strength "in the presence of decreased motion, painful conditions, deformities, or absence of parts (*e.g.* thumb amputation) that prevent effective application of maximal force in the region being evaluated."[12] Dr. Person also found that appellant had an additional impairment due to pain, loss of endurance and loss of function. He did not, however, reference to the specific tables and pages of the A.M.A., *Guides*, that he relied upon in reaching this finding. As Dr. Person's impairment evaluation does not fully conform to the provisions of the A.M.A., *Guides*, it is of diminished probative value.[13]

An Office medical adviser reviewed Dr. Person's report and opined that appellant had an 80 percent impairment of the left middle finger. He stated, "When an amputation occurs, that is the basis for the impairment rating." The A.M.A., *Guides*, however, instructs the evaluator to consider the condition of the resulting stump, pain, and any loss of motion of the proximal joints in determining the extent of an impairment of a digit after an amputation.[14] Consequently, the Office medical adviser erred in failing to consider any factor other than appellant's amputation in reaching his impairment determination.

[10] A.M.A., *Guides* 441.

[11] *Claudio Vazquez*, 52 ECAB 496 (2001).

[12] A.M.A., *Guides* 508.

[13] *Mary L. Henninger*, 52 ECAB 408 (2001).

[14] A.M.A., *Guides* 441.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[15] As neither Dr. Person nor the Office medical adviser provided an impairment rating in conformance with the A.M.A., *Guides*, the Board finds that the case is not in posture for decision. The case is remanded to the Office for further development to determine the extent of appellant's left upper extremity impairment. Following such further development as the Office deems necessary, it shall issue an appropriate merit decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 18, 2007 and August 30, 2006 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 9, 2008
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

[15] *Claudio Vazquez*, *supra* note 11.