

and side-to-side repair of the extensor pollicis brevis tendon to the abductor pollicis longus tendon. On February 20, 1992 the Office accepted appellant's claim for a ruptured extensor pollicis brevis tendon of the right thumb with related surgery and a right hand sprain. Appellant retired effective January 3, 1997. On January 11, 2008 she filed a claim for a schedule award.

In an October 9, 2007 report, Dr. George L. Rodriguez, a Board-certified physiatrist, stated that appellant had intermittent sharp pain at the radial aspect of the base of her right thumb and wrist. He provided findings on physical examination. Dr. Rodriguez found that appellant had 20 percent impairment of her right thumb based on 50 degrees of flexion of the metacarpophalangeal (MP) joint 1 percent, according to Figure 16-15 at page 457 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001) and Tables 16-18 at page 499 (disorders of specific joints or units) 15 percent and Tables 16-28 at page 506 (digit impairment due to intrinsic tightness of right thumb) 20 percent.¹ He converted 20 percent digit impairment to 8 percent hand impairment, based on Table 16-2 at page 438 and 8 percent hand impairment to 18 percent upper extremity impairment based on Table 16-2 at page 439.² Dr. Rodriguez found three percent whole person impairment for pain based on section 18.3d at page 573. He indicated that 100 percent upper extremity impairment equals 60 percent whole person impairment based on Figure 16-2 at page 441. Based on the Office's procedure manual, Dr. Rodriguez divided 3 percent by 60 percent and found 5 percent upper extremity impairment due to pain.³ He combined 18 percent for upper extremity decreased range of motion with 5 percent for upper extremity pain which equaled 22 percent impairment of the upper extremity according to the Combined Values Chart at page 604.

On April 11, 2008 Dr. Morley Slutsky, a Board-certified specialist in preventive medicine and an Office medical adviser, found that appellant had 20 percent impairment of her right thumb based on the findings in Dr. Rodriguez' report.⁴ He stated that her impairment was to the thumb, not the upper extremity, because intrinsic tightness (Table 16-28 at page 506) is rated at the digit level, not the upper extremity level. Dr. Slutsky noted that five percent impairment for pain was incorrect because appellant had a separate claim in which impairment

¹ Apparently Dr. Rodriguez followed the instructions in section 16.7c (Musculotendinous Impairments) at page 506 of the A.M.A., *Guides* which provides that "Intrinsic tightness impairment *cannot be combined* with [impairment] due to decreased motion at the MP or PIP [proximal interphalangeal] joints." (Emphasis in the original.) Apparently he found 20 percent impairment from Table 16-28 for intrinsic tightness of the MP joint of the thumb but did not include impairment for decreased range of motion from Figure 16-15 and Table 16-18.

² Dr. Rodriguez erred in converting 8 percent hand impairment to 18 percent upper extremity impairment. Table 16-2 at page 439 shows that eight percent hand impairment is equal to seven percent upper extremity impairment. Dr. Rodriguez may have inadvertently used the 20 percent digit (thumb) impairment in his review of Table 16-2. A 20 percent hand impairment equals 18 percent upper extremity impairment according to Table 16-2.

³ See Federal (FECA) Procedural Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(c)(2)(b) (August 2002).

⁴ See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present). The Board notes that in his report Dr. Slutsky erroneously refers to Dr. Rodriguez as Dr. Gonzales.

had been accepted for pain or sensory deficit of the median and ulnar nerves of the hand. He stated that appellant had reduced right thumb MP joint motion impairment (Figure 16-15 and Table 16-18) but range of motion impairment could not be combined with impairment for right thumb intrinsic tightness according to the instructions in section 16.7(c) at page 506 of the A.M.A., *Guides*.⁵

On June 18, 2008 the Office granted appellant a schedule award for 20 percent impairment of her right thumb from December 31, 1996 to April 17, 1997 or 15 weeks.⁶

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁷ and its implementing regulations⁸ 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 regulations as the appropriate standard for evaluating schedule losses.⁹

ANALYSIS

Dr. Rodriguez found that appellant had 20 percent impairment of her right thumb. He converted 20 percent digit impairment to 8 percent hand impairment, based on Table 16-2 at page 438 and 8 percent hand impairment to 18 percent upper extremity impairment based on Table 16-2 at page 439.¹⁰ Dr. Rodriguez combined 18 percent upper extremity impairment for decreased range of motion with 5 percent for pain and found that appellant had 22 percent impairment of the upper extremity. However, under the Act, if only one digit (thumb or a finger) is impaired, the impairment percentage does not extend to a larger unit, the hand or the upper extremity. Because only one of appellant's digits was impaired, her thumb, she is not entitled to impairment for a larger unit, her hand or upper extremity.¹¹ Dr. Rodriguez found three percent whole person impairment for pain based on section 18.3d at page 573. However, while the A.M.A., *Guides* provides for impairment to the individual member and to the whole person, the

⁵ See *supra* note 1.

⁶ The Act provides for 75 weeks of compensation for 100 percent loss or loss of use of a thumb. Multiplying 75 weeks by 20 percent equals 15 weeks of compensation.

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ A.M.A., *Guides* (5th ed. 2001).

¹⁰ As noted, Dr. Rodriguez erred because Table 16-2 provides that eight percent hand impairment equals seven percent upper extremity impairment. A.M.A., *Guides* 439, Table 16-2.

¹¹ 5 U.S.C. § 8107(c)(17),(20).

Act does not provide for permanent impairment for the whole person.¹² Therefore, appellant is not entitled to a schedule award for the whole person based on her accepted right thumb condition. Dr. Rodriguez converted the whole person pain impairment to five percent upper extremity impairment due to pain based on Chapter 18 of the A.M.A., *Guides*.¹³ However, the A.M.A., *Guides* warns that examiners should not use Chapter 18 to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters.¹⁴ Moreover, as the A.M.A., *Guides* explains: “The impairment ratings in the body organ system chapters make allowance for expected accompanying pain.”¹⁵ Dr. Rodriguez did not adequately explain why appellant’s condition could not be rated in other chapters of the A.M.A., *Guides* or how her condition falls within one of the several situations identified under Chapter 18.3a (When This Chapter Should Be Used to Evaluate Pain-Related Impairment).¹⁶ In any event, the record reflects that appellant has already received compensation for pain or sensory deficit of her hand in a separate claim. Due to these deficiencies, Dr. Rodriguez’ report is not sufficient to establish appellant’s impairment.

Dr. Slutsky found that appellant had 20 percent impairment of her right thumb based on the physical findings in Dr. Rodriguez’ report. He stated that her impairment was to the thumb, not the upper extremity, because intrinsic tightness of the right thumb is rated at the digit level, not the upper extremity level. Dr. Slutsky noted that five percent impairment for pain was incorrect because appellant had a separate claim in which impairment had been accepted for pain or sensory deficit of the median and ulnar nerves of the hand. He stated that appellant had reduced right thumb MP joint motion impairment but this could not be combined with impairment for right thumb intrinsic tightness according to the instructions in section 16.7(c) at page 506 of the A.M.A., *Guides*.¹⁷ Dr. Slutsky considered all the physical findings in Dr. Rodriguez’ report and referenced the applicable sections of the A.M.A., *Guides* and the Office’s procedure manual. The Board finds that the weight of the medical evidence, represented by the report of Dr. Slutsky, establishes that appellant has no more than 20 percent impairment of her right thumb, for which she received a schedule award.

CONCLUSION

The Board finds that appellant has no more than 20 percent impairment of her right thumb for which she received a schedule award.

¹² *Guiseppa Aversa*, 55 ECAB 164, 167 (2003).

¹³ The A.M.A., *Guides* provides for a maximum of three percent impairment for pain in Chapter 18 at page 573.

¹⁴ A.M.A., *Guides* 571.

¹⁵ *Id.* at 20.

¹⁶ *Id.* at 570-71.

¹⁷ *See supra* note 1.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 18, 2008 is affirmed.

Issued: February 3, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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