

accepted conditions of right and left lateral epicondylitis and left thumb osteoarthritis.¹ The Board affirmed the Office's finding that she was not entitled to a schedule award for a permanent impairment of the left hand. In a decision dated March 22, 2001, the Board affirmed a July 27, 1999 decision denying appellant's request to reopen her case for further review of the merits under 5 U.S.C. § 8128.² The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

On November 27, 2007 appellant filed a claim for a schedule award.³ In an impairment evaluation dated January 14, 2008, Dr. Frederick R. Young, an orthopedic surgeon, reviewed her history of surgeries for a left thumb injury, including a fusion of the carpometacarpal (CMC) joint, a refusion on January 16, 1998, and the removal of hardware on March 24, 1998 and June 18, 2003. For the left and right elbows, Dr. Young measured 150 degrees flexion, 0 degrees extension, 80 degrees pronation and 80 degrees supination, which he found yielded no elbow impairment.⁴ For the left thumb, he found that 80 degrees flexion and 10 degrees extension of the interphalangeal (IP) joint yielded no impairment and 70 degrees flexion and 0 degrees extension of the metacarpophalangeal (MP) joint yielded no impairment.⁵ For the CMC joint, Dr. Young determined that 45 degrees abduction and 1 degrees adduction yielded no impairment.⁶ He found, however, that left thumb opposition of six centimeters yielded a three percent impairment of the thumb.⁷ Dr. Young determined that a three percent impairment of the thumb yielded a one percent hand impairment.⁸ He further measured no loss of range of motion of either the right thumb or the remaining fingers of either hand.⁹ Citing the A.M.A., *Guides*, Dr. Young concluded that appellant had a one percent impairment of the left hand which equaled a one percent permanent impairment of the left upper extremity. He indicated that she reached maximum medical improvement on August 27, 2007.

¹ Docket No. 96-1883 (issued June 10, 1998). The Office accepted appellant's June 28, 1994 occupational disease claim, assigned file number xxxxxx236, for right lateral epicondylitis and left thumb osteoarthritis. It further accepted that she sustained left lateral epicondylitis under a subsidiary file assigned file number xxxxxx724. The Office also accepted that appellant sustained right lateral epicondylitis under subsidiary file number xxxxxx230. Both subsidiary files are closed.

² Docket No. 00-748 (issued March 22, 2001).

³ By decisions dated March 22, 2004 and April 20, 2005, the Office denied appellant's claim for compensation from November 2, 2002 to November 4, 2003 and December 26, 2002 onward on the grounds that the medical evidence was insufficient to establish disability from employment. In decisions dated August 9, 2005 and December 29, 2006, the Office denied her claim for compensation after November 14, 2003.

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) at 472, 474, Figures 16-34, 16-37.

⁵ *Id.* at 456, 457, Figures 16-12, 16-15.

⁶ *Id.* at 459, Figures 16-18a, 16-18b.

⁷ *Id.* at 460, Table 16-9.

⁸ *Id.* at 438, Table 16-1.

⁹ *Id.* at Figures 16-32 to 16-27 and 16-10 to 16-15 on pages 450-54, 470-74 and 454-66.

On December 1, 2008 an Office medical adviser concurred with Dr. Young's finding of a three percent impairment of the left thumb due to loss of opposition according to Table 16-9 on page 460 of the A.M.A., *Guides*. She found that the three percent left thumb impairment equaled a one percent left hand impairment and a one percent left upper extremity impairment under Tables 16-1 and 16-2 on pages 438 and 439 of the A.M.A., *Guides*.

By decision dated January 29, 2009, the Office granted appellant a schedule award for a one percent permanent impairment to the left upper extremity. The period of the award ran for 3.12 weeks from November 7 to 28, 2008.

On February 3, 2009 appellant requested a telephone hearing. She resubmitted a September 7, 2005 impairment evaluation from Dr. Alice M. Martinson, a Board-certified orthopedic surgeon, who provided a second opinion evaluation. Dr. Martinson diagnosed solid arthrodesis of the CMC joint of the left thumb. She completed an impairment evaluation of the left thumb listing range of motion. Dr. Martinson also noted findings of weakness of the affected side with ankylosis and loss of grip strength.

At the hearing, held on April 22, 2009, appellant related that she had limited use of her hand and thumb. She discussed her submission of an impairment evaluation from Dr. Martinson in 2005 and noted that the Office did not take any action after its receipt. Appellant related that her condition affected her thumb, hand and upper extremity not just one part.

By decision dated June 17, 2009, the hearing representative affirmed the January 29, 2009 schedule award. She found that Dr. Martinson's opinion was of diminished weight as her report was dated two and a half years before Dr. Young's evaluation and as she did not specify any impairment. The hearing representative also found that the Office properly awarded appellant a schedule award for a one percent permanent impairment of the upper extremity rather than a one percent impairment of the hand or three percent impairment of the thumb as it was the most favorable award.

On appeal appellant notes that the Office referred her for an impairment evaluation in 2005 but that her claims examiner did not take any action. She contended that Dr. Young was not qualified to provide a rating as he did not have knowledge of her work duties and the only surgery he performed was the attempted removal of a left thumb screw. Appellant questioned why Dr. Martinson's evaluation was not contained in the case record. She also contended that she only had an impairment of the thumb and thus the Office should not have applied 5 U.S.C. § 8107(c)(17).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,¹⁰ and its implementing federal regulations,¹¹ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or

¹⁰ 5 U.S.C. § 8107.

¹¹ 20 C.F.R. § 10.404.

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* as the uniform standard applicable to all claimants.¹² For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹³

ANALYSIS

The Office accepted that appellant sustained right lateral epicondylitis and left thumb osteoarthritis due to factors of her federal employment.¹⁴ On November 27, 2007 appellant filed a claim for a schedule award and submitted a January 14, 2008 impairment evaluation from Dr. Young who reviewed the history of injury and provided range of motion measurements for the bilateral elbows, thumbs and fingers. Dr. Young determined that appellant had no impairment due to loss of range of motion of the elbows, fingers or right thumb.¹⁵ For the IP joint of the left thumb, he measured 80 degrees flexion and 10 degrees extension, which he found constituted no impairment.¹⁶ Dr. Young further found that 70 degrees flexion and 0 degrees extension of the MP joint and 45 degrees abduction and 1 degree adduction of the CMC joint yielded no impairment.¹⁷ He determined that six centimeters of left thumb opposition constituted a three percent impairment according to Table 16-1 on page 438. Dr. Young noted that a three percent impairment of the thumb equaled a one percent impairment of the hand and a one percent permanent impairment of the upper extremity.

On December 1, 2008 an Office medical adviser agreed with Dr. Young's finding that appellant had a three percent impairment of the thumb due to loss of opposition according to Table 16-9 on page 460 of the A.M.A., *Guides*. She converted the three percent impairment of the thumb into a one percent impairment of the upper extremity. The Board finds that there is no current, probative medical evidence consistent with the A.M.A., *Guides* to establish that appellant has more than a one percent impairment of the upper extremity.

On appeal appellant contends that the Office erred in failing to take action when it received Dr. Martinson's 2005 report.¹⁸ The Board's jurisdiction, however, is limited to reviewing final decisions of the Office.¹⁹ Further, as found by the hearing representative,

¹² *Id.* at § 10.404(a).

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). As of May 1, 2009, the sixth edition will be used. FECA Bulletin No. 09-03 (issued March 15, 2009).

¹⁴ The Office further accepted that she sustained left lateral epicondylitis under a subsidiary file number.

¹⁵ Dr. Young's range of motion measurements for the elbows, right thumb and fingers do not yield any impairment under the A.M.A., *Guides*. See A.M.A., *Guides* 472, 474, 456, 457, 459, Figures 16-34, 16-37, 16-12, 16-15, 16-23, 16-25.

¹⁶ *Id.* at 456, Figure 16-12.

¹⁷ *Id.* at 457, 459, Figures 16-15, 16-18.

¹⁸ Contrary to appellant's assertion, Dr. Martinson's report is contained in the case record.

¹⁹ 20 C.F.R. § 501.2(c).

Dr. Martinson's 2005 report is of limited probative value on the schedule award issue as it did not provide a current description of any impairment.

Appellant asserts that Dr. Young was not qualified to perform an impairment evaluation as he did not have knowledge of her work duties and was not her initial treating physician. It is her burden, however, to submit medical evidence supporting the degree of permanent impairment.²⁰

Appellant further argues that she only had an impairment of the thumb and thus the Office erred in applying section 8107(c)(17). Section 8107(c)(17) provides that schedule award compensation "for the loss of use of two or more digits, or one or more phalanges of each of two or more digits of a hand or foot, is proportioned to the loss of use of the hand or foot occasioned thereby."²¹ The medical evidence supports that appellant has a three percent impairment of the left thumb, which under the A.M.A., *Guides* constitutes a one percent impairment of the hand and a one percent impairment of the upper extremity.²² The Board has held that where the residuals of an injury to a scheduled member of the body extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into a hand, or a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.²³ The number of weeks of compensation for a schedule award is determined by the compensation schedule at section 8107(c). According to the schedule, a three percent impairment of the thumb would yield compensation for 2.25 weeks, a one percent impairment of the hand would yield compensation for 2.44 weeks and a one percent impairment of the arm would yield compensation for 3.12 weeks.²⁴ The Office granted appellant a schedule award for a one percent impairment of the left upper extremity instead of a one percent impairment of the hand or a three percent impairment of the thumb, the greatest award.

CONCLUSION

The Board finds that appellant has no more than a one percent permanent impairment of the left upper extremity for which she received a schedule award.

²⁰ See *D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

²¹ 5 U.S.C. § 8107(c)(17).

²² A.M.A., *Guides* 438, 439, Tables 16-1, 16-2.

²³ *Charles B. Carey*, 49 ECAB 528 (1998).

²⁴ *Id.* at § 8107(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 17, 2009 is affirmed.

Issued: May 17, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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