

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

A.P., Appellant)	
)	
and)	Docket No. 10-641
)	Issued: October 6, 2010
DEPARTMENT OF DEFENSE, DEFENSE)	
COMMISSARY AGENCY, Annapolis, MD,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 21, 2010 appellant filed a timely appeal of the October 1, 2009 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has impairment to his right thumb causally related to his November 12, 2008 employment injury.

FACTUAL HISTORY

On November 12, 2008 appellant, then a 46-year-old meat cutter leader, sustained an open wound of the right thumb without complications while cutting meat with a band saw. On November 18, 2008 Dr. Lyn N. Dea, an attending physician, diagnosed a lacerated right thumb and described the treatment provided. In December 2008, appellant filed a claim for a schedule award.

On August 18, 2009 the Office advised appellant of the medical evidence needed to establish his claim for a schedule award. It advised that the physician should use the 6th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) in rating any impairment. The Office provided an upper extremity impairment worksheet for the rating physician to complete. No impairment report was received by the Office from an attending or treating physician.

By decision dated October 1, 2009, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish that he had impairment due to his accepted right thumb injury.¹

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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* (sixth edition) has been adopted by the Office as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish impairment due to his accepted right thumb injury.

On August 18, 2009 the Office advised appellant of the medical evidence needed to establish his claim for a schedule award. It advised that the physician should use the 6th edition of the A.M.A., *Guides* in calculating any impairment. The Office provided an upper extremity impairment worksheet for the rating physician to complete. Appellant did not provide an impairment rating from his physician. There is no medical evidence establishing impairment to his right thumb. It is appellant's burden of proof to establish entitlement to a schedule award.⁵

¹ The Board notes that, while this appeal was pending, the Office issued a February 1, 2010 decision denying appellant's request for reconsideration. This decision is null and void. *See Douglas E. Billings*, 41 ECAB 880 (1990) (holding that decisions of the Office are null and void, because they were issued while the same issue in the case was on appeal to the Board). Subsequent to the October 1, 2009 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404; FECA Bulletin No. 9-03, issued March 15, 2009 (providing for use of the 6th edition of the A.M.A., *Guides* effective May 1, 2009).

⁴ *Id.*

⁵ *Tammy L. Meehan*, 53 ECAB 229 (2001).

The Office procedures provide that to support a schedule award, the record must contain competent medical evidence that describes the impairment in detail, gives a percentage of impairment, and gives an opinion that the impairment is permanent and stable.⁶ Appellant did not submit any medical evidence to establish entitlement to a schedule award. Therefore, the Office properly denied his schedule award claim.

CONCLUSION

The Board finds that appellant failed to establish that he has impairment causally related to his accepted right thumb injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 1, 2009 is affirmed.

Issued: October 6, 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

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards, and Permanent Disability Claims*, Chapter 2.808.6(b) (January 2010).