

American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)² (hereinafter) rather than the sixth edition.³

FACTUAL HISTORY

On August 7, 1998 OWCP accepted that appellant, then a 44-year-old city letter carrier, sustained a fracture to his left thumb and a contusion of the right forearm as the result of a dog bite on July 24, 1998. Appellant stopped work on the day of the injury and returned to limited duty on July 29, 1998. He later resumed regular duties as a letter carrier.

On July 27, 2004 appellant filed a schedule award claim. In a December 4, 2003 report, Dr. David Weiss, an attending osteopath, advised that under the fifth edition of the A.M.A., *Guides* appellant had a 13 percent impairment of the left arm.⁴ In a report dated June 15, 2004, he advised that, under the fifth edition of the A.M.A., *Guides*, appellant had a 41 percent impairment of the left upper extremity. In reports dated August 21, 2006 and July 11, 2007, an OWCP medical adviser reviewed the medical evidence and advised that appellant had a 24 percent impairment of the left upper extremity.

OWCP determined that a conflict in medical evidence arose between the opinions of Dr. Weiss and an OWCP medical adviser. On August 7, 2007 it referred appellant to Dr. Zohar Stark, a Board-certified orthopedic surgeon, for an impartial evaluation. In an August 21, 2007 report, Dr. Stark advised that, under the fifth edition of the A.M.A., *Guides*, appellant had a 9 percent impairment due to loss of sensation of half of the ulnar and radial palmar nerves to the left thumb and that, under Table 18-1, he had a 3 percent disability or a total 12 percent impairment of the left arm.⁵

In February 2010, OWCP referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second-opinion evaluation. In a February 18, 2010 report, Dr. Smith noted appellant's complaints of throbbing pain and dysesthetic sensation in the distribution of the radial digital nerve of the left thumb. He advised that he had reviewed the statement of accepted facts and medical record and provided physical examination findings, noting a well-healed sensitive scar over the radial volar surface of the left thumb. Dr. Smith provided range of motion measures of the left thumb, noting 5 centimeters (cm) of adduction; 40 degrees of radial adduction;⁶ 6 cm of opposition; 40 degrees of flexion at the metacarpophalangeal (MCP) joint; 10 degrees of extension; 60 degrees of flexion of the interphalangeal (IP) joint; and 10 degrees of extension. He diagnosed sensitive laceration of the radial volar aspect of the left nondominant thumb and healed thumb fracture and puncture wounds of the forearm and advised that appellant

² A.M.A., *Guides* (5th ed. 2001).

³ *Id.* at (6th ed. 2008).

⁴ *Supra* note 2.

⁵ Drs. Weiss and Stark and an OWCP medical adviser also provided impairment ratings for the right upper extremity. On August 20, 2010 appellant was granted a schedule award for a three percent impairment of the right upper extremity. This decision is not at issue in this case and has not been appealed to the Board.

⁶ It appears that the physician meant radial abduction. See Table 15-30, A.M.A., *Guides*, *supra* note 3 at 468.

was at maximum medical improvement. Dr. Smith stated that, in accordance with Table 15-30 of the sixth edition of the A.M.A., *Guides*, the measurements for range of motion of appellant's left thumb fell into grade modifier 1, the mild category and that his range of motion deficits yielded a 15 percent digital impairment. In accordance with Table 15-12, he converted the digital impairment to an upper extremity impairment, finding a five percent left upper extremity impairment due to loss of motion. Dr. Smith stated that, under Table 15-21, appellant had a moderate sensory deficit of the radial palmar digital nerve for a class 1, three percent upper extremity impairment. He then combined the motor deficit of five percent with the sensory deficit of three percent, for a total eight percent impairment of the left upper extremity.

In an April 18, 2010 report, Dr. Andrew A. Merola, an OWCP medical adviser who is Board-certified in orthopedic surgery, noted his review of Dr. Smith's report. He advised that February 18, 2010 was the date of maximum medical improvement and agreed with Dr. Smith's conclusion that appellant had a five percent upper extremity impairment due to loss of motion of the left thumb and a three percent impairment due to sensory loss, for a total eight percent left upper extremity impairment.

By decision dated April 30, 2010, appellant was granted a schedule award for an eight percent impairment of the left upper extremity, for a total of 24.96 weeks, to run from February 18 to August 11, 2010. On May 7, 2010 appellant, through his attorney, requested a hearing. At the hearing, held by video conference on September 8, 2010, appellant testified that he still had pain, numbness and weakness of the left thumb. His attorney argued that a conflict in medical evidence existed regarding appellant's left upper extremity impairment and that he had requested that Dr. Weiss provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. The record was held open for 30 days.

In a December 1, 2010 decision, an OWCP hearing representative affirmed the April 30, 2010 decision. She noted that no new medical evidence was submitted after the September 8, 2010 hearing and the case record contained no medical evidence supporting a greater impairment under the sixth edition of the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of FECA⁷ and its implementing federal regulations,⁸ 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, FECA 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, OWCP adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁹ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹⁰

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* at § 10.404(a).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

For decisions issued after May 1, 2009, the sixth edition is used.¹¹ The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹²

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹³

ANALYSIS

OWCP accepted appellant's claim that he sustained an employment-related fracture of the left thumb and contusion of the right forearm on July 24, 1998 when he was bit by a dog. On July 24, 2004 appellant filed a schedule award and by decision dated April 30, 2010, was granted a schedule award for an eight percent impairment of the left upper extremity.¹⁴

Regarding appellant's argument on appeal that the fifth edition of the A.M.A., *Guides* should be used in assessing his impairment, the Board notes that the method used in rating impairment for purposes of a schedule award is a matter which rests in the sound discretion of the Director. In the case, *Harry D. Butler*,¹⁵ the Board addressed OWCP's use of the A.M.A., *Guides* to evaluate impairment since the first edition single volume published in 1971. The Director has adopted the subsequent editions of the A.M.A., *Guides* and stated that the specific date when use of each edition should be made applicable to claims under FECA. Appellant has not established that the Director abused the discretion delegated under section 8107 of FECA or the implementing federal regulations to make the sixth edition of the A.M.A., *Guides* applicable to all claimants as of May 1, 2009. The fact that the sixth edition revises the evaluation methods used in previous editions does not establish an abuse of discretion. As noted in FECA Bulletin No. 09-03,¹⁶ the American Medical Association periodically revises the A.M.A., *Guides* to incorporate current scientific clinical knowledge and judgment and to establish standardized methodologies for calculating permanent impairment.

¹¹ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹² A.M.A., *Guides*, *supra* note 3 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹³ *See also*, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹⁴ Appellant was also granted a schedule award for a three percent permanent impairment of the right upper extremity on August 20, 2010. As he has not filed an appeal with the Board of the August 20, 2010, it is not at issue in this case.

¹⁵ 43 ECAB 859 (1992).

¹⁶ *Supra* note 10.

The sixth edition of the A.M.A., *Guides* became effective on May 1, 2009.¹⁷ Following the September 8, 2010 hearing, the record was held open for 30 days and an OWCP hearing representative did not issue her decision until December 1, 2010. During that period no further medical evidence was received and the hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Smith, as supported by that of an OWCP medical adviser.

The sixth edition of the A.M.A., *Guides* provides that, under certain circumstances, range of motion may be selected as an alternative approach in rating impairment.¹⁸

In his February 18, 2010 report, Dr. Smith first advised that, under Table 15-30 of the sixth edition of the A.M.A., *Guides*, Thumb Range of Motion, appellant's left thumb fit into the grade 1 category. He indicated that 60 degrees of IP joint flexion yielded a 1 percent digital impairment; zero degrees of extension yielded a 1 percent impairment; 40 degrees of MCP joint flexion yielded a 2 percent impairment; a minus 10 extensor lag of the MCP joint yielded a 1 percent impairment; 5 cm of adduction yielded a 4 percent impairment; 40 degrees of radial abduction yielded a 2 percent impairment; and 6 cm of opposition yielded a 4 percent impairment, yielded a total digital impairment due to loss of motion of 15 percent.¹⁹ In accordance with Table 15-12, Dr. Smith then properly converted the digital impairment to an upper extremity impairment, finding that appellant had a five percent upper extremity impairment due to loss of left thumb motion.²⁰ He then found that, under Table 15-21, Peripheral Nerve Impairment, appellant had a class 1, moderate sensory deficit of the radial palmar digital nerve for a three percent upper extremity impairment.²¹ Dr. Smith then combined the five percent impairment due to loss of thumb motion with the three percent sensory impairment, finding a total eight percent impairment of the left upper extremity. Dr. Merola agreed with Dr. Smith's conclusion that appellant had five percent impairment due to loss of thumb motion with the three percent sensory impairment, for a total eight percent impairment of the left upper extremity.²²

As there is no additional probative medical evidence regarding appellant's entitlement to a schedule award under the sixth edition of the A.M.A., *Guides*, a conflict in medical evidence

¹⁷ *Id.*

¹⁸ A.M.A., *Guides*, *supra* note 3 at 390. The A.M.A., *Guides* explains that diagnoses in the grid that may be rated using range of motion are followed by an asterisk. *Id.* In this case, the Digital Regional Grid includes an asterisk for thumb fractures. *Id.* at 393.

¹⁹ *Id.* at 468.

²⁰ *Id.* at 421.

²¹ *Id.* at 438.

²² The Board notes that the A.M.A., *Guides* provide that range of motion impairments can be modified using Table 15-35. *Id.* at 477. Appellant would not be entitled to an increased schedule award by using this table.

was not established. OWCP properly found that he has no more than eight percent impairment for the left upper extremity.²³

Appellant may request an increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in an increased impairment.

CONCLUSION

The Board finds that appellant has no more than an eight percent permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2010 decision of the Office of Workers' Compensation is affirmed.

Issued: November 7, 2011
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

²³ See *B.C.*, Docket No. 10-2061 (issued May 19, 2011).