

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

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A.A., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**CUSTOMS & BORDER PROTECTION,** )  
**San Antonio, TX, Employer** )

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**Docket No. 11-658**  
**Issued: October 18, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 19, 2011 appellant filed a timely appeal of a November 17, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision regarding a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has more than seven percent impairment of his right arm for which he received a schedule award.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 14, 2009 appellant, then a 38-year-old border patrol officer in the canine unit, filed a traumatic injury claim alleging that a dog bit him on the right hand several times. OWCP accepted his claim for open wound of hand, cellulitis of the right upper arm and forearm and cellulitis of the hand. Appellant returned to work on July 20, 2009.

On August 4, 2010 appellant filed a claim for compensation requesting a schedule award. In a report dated December 14, 2009, Dr. Bliss W. Clark, II, a Board-certified orthopedic surgeon, noted appellant's history of a dog bite at work and the resulting cellulitis which had completely resolved. She stated that he had reached maximum medical improvement. Dr. Clark noted that appellant had a concurrent diagnosis of type two diabetes. She noted that he had absent two-point sensation due to compression injury to the digital nerves and loss of radial sensation in the same distribution with complete longitudinal loss of sensation in his fifth finger as well as on the ulnar distribution of the fourth finger. Dr. Clark provided an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and found that appellant had total transverse sensory loss of the little finger 50 percent impairment of the finger, 5 percent impairment of the hand and upper extremity.<sup>2</sup> Appellant also demonstrated 50 percent transverse sensory loss of the ring finger, with complete loss of ulnar side sensation or 25 percent digit impairment, 3 percent hand and upper extremity impairment. Dr. Clark concluded that appellant had a combined impairment of seven percent.

Dr. Ronald Blum, an OWCP medical adviser reviewed this report on September 30, 2010. He concluded that appellant had reached maximum medical improvement on December 14, 2009, the date of Dr. Clark's report. Dr. Blum reviewed Dr. Clark's findings and applied the A.M.A., *Guides*. He stated that appellant had 50 percent impairment of the little finger due to total transverse sensory loss.<sup>3</sup> Dr. Blum noted that 50 percent loss of the digit converted to 5 percent impairment of the upper extremity.<sup>4</sup> He stated that total transverse sensory loss of the ulnar digital nerve to the right ring finger was 20 percent impairment to the digit.<sup>5</sup> Dr. Blum noted that Dr. Clark recommended 25 percent, but apparently used an incorrect table. He stated that 20 percent impairment of the right ring finger was 2 percent impairment of the upper extremity.<sup>6</sup> Dr. Blum combined the two impairments resulting in seven percent impairment of the right upper extremity.<sup>7</sup>

By decision dated November 17, 2010, OWCP granted appellant a schedule award for seven percent impairment of his right upper extremity.

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<sup>2</sup> A.M.A., *Guides* 426, Figure 15-4.

<sup>3</sup> *Id.* at 427, Table 15-16.

<sup>4</sup> *Id.* at 422, Table 15-12.

<sup>5</sup> *Id.* at 427, Table 15-17.

<sup>6</sup> *Id.* at 421, Table 15-12.

<sup>7</sup> *Id.* at 604.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>8</sup> and its implementing regulations<sup>9</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>10</sup>

## ANALYSIS

OWCP accepted that appellant sustained a dog bite to his right hand. Appellant's attending physician, Dr. Clark noted that appellant had absent two-point discrimination in his fifth finger and the in ulnar distribution of his fourth finger. The A.M.A., *Guides* state that total transverse sensory loss represents 100 percent sensory loss involving both digital nerves and receives 50 percent of the digit amputation impairment value.<sup>11</sup> Table 15-16 of the A.M.A., *Guides* provides impairment for transverse and longitudinal sensory loss in the thumb and little finger. Based on this table both Dr. Clark and Dr. Blum found that appellant had 50 percent impairment of his right little finger. The physicians utilized Table 15-12 of the A.M.A., *Guides* which converts the impairment values calculated from digit impairment to hand and upper extremity impairment to reach an impairment rating of five percent.<sup>12</sup> Table 15-17 provides impairment ratings for digit impairment for transverse and longitudinal sensory losses in the ring finger.<sup>13</sup> Dr. Clark found appellant had 50 percent transverse sensory loss of the ring finger, with complete loss of ulnar side sensation. She stated this was 25 percent digit impairment, 3 percent hand and upper extremity impairment. The Board finds, however, that utilizing Table 15-17 this impairment is 20 percent impairment as noted by Dr. Blum and converts to 2 percent impairment

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<sup>8</sup> 5 U.S.C. §§ 8101-8193, 8107.

<sup>9</sup> 20 C.F.R. § 10.404.

<sup>10</sup> For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides* (6<sup>th</sup> ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>11</sup> A.M.A., *Guides*, 427.

<sup>12</sup> *Id.* at 421-23, Table 15-12.

<sup>13</sup> *Supra* note 5.

of the right upper extremity.<sup>14</sup> Both physicians determined that appellant had seven percent impairment<sup>15</sup> when the values for the fourth and fifth fingers were combined.<sup>16</sup>

The Board concludes that the weight of the medical evidence establishes that appellant has no more than seven percent impairment of his right upper extremity for which he has received a schedule award.

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

### **CONCLUSION**

The Board finds that appellant has no more than seven percent impairment of his upper extremity for which he received a schedule award.

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<sup>14</sup> *Id.* at *supra* note 6.

<sup>15</sup> Dr. Clark expressed appellant's total impairment rating in terms of the whole person. FECA and the implementing regulations do not allow for a schedule award due to impairments of the whole person. No schedule award is payable for a member, organ or function of the body that is not specified in FECA or the implementing regulations. *Tania R. Keka*, 55 ECAB 354 (2004). Therefore appellant is not entitled to schedule award based on an impairment rating to the whole person.

<sup>16</sup> A.M.A., *Guides* 604, Appendix A. Combined Values Chart.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 17, 2010 is affirmed.

Issued: October 18, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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