

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

J.A., Appellant)
and) Docket No. 11-859
U.S. POSTAL SERVICE, POST OFFICE,) Issued: October 19, 2011
Tampa, FL, Employer)

)

Appearances:
Capp Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 17, 2011 appellant filed a timely appeal from a January 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 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 more than a four percent bilateral thumb permanent impairment.

FACTUAL HISTORY

On September 1, 2008 appellant, then a 61-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral carpometacarpal (CMC) joint arthritis as a

¹ 5 U.S.C. § 8101 *et seq.*

result of his federal employment. Following development of the evidence, OWCP accepted the claim for bilateral thumb osteoarthritis on May 29, 2009.

In a report dated January 7, 2010, Dr. Richard Rogachefsky, an orthopedic surgeon, provided a history and results on examination. He noted range of motion for the metacarpophalangeal (MCP) and interphalangeal (IP) joints of the thumbs. Dr. Rogachefsky opined that appellant had a 30 percent disability rating based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a report dated January 19, 2010, he stated that he had applied Table 15-2, with a class 3 diagnosis that had a 30 percent thumb impairment as a default value. Dr. Rogachefsky indicated that there was no adjustment to the default of 30 percent for each thumb or the equivalent of 11 percent arm impairment.

OWCP referred the case to its medical adviser for evaluation. In a report dated March 5, 2010, the medical adviser noted that Dr. Rogachefsky had not provided range of motion findings for the CMC joint and there was no evidence of x-ray results. In a report dated April 15, 2010, Dr. Rogachefsky stated that the 30 percent impairment was not based on range of motion, but the diagnosis in Table 15-2. He indicated that he was submitting a fluoroscopy of appellant's hands. In a September 13, 2010 report, Dr. Rogachefsky reported that the range of motion for the CMC was 35 degrees in both thumbs.

In a report dated September 23, 2010, OWCP's medical adviser recommended that the case be referred for a second opinion evaluation. The medical adviser stated that the impairment for 30 percent under Table 15-2 was for a CMC arthroplasty and there was no indication that surgery had been performed. OWCP's medical adviser also noted that the range of motion results were incomplete, as the A.M.A., *Guides* required measurements for adduction, radial abduction and opposition.

Appellant was referred to Dr. Wendell Bulmer, an osteopath, for a second opinion evaluation. In a report dated December 21, 2010, Dr. Bulmer reviewed a history of injury and provided results on examination. With respect to the CMC joint, he found 35 degrees of abduction and full opposition. Dr. Bulmer also reported MCP flexion of 45 degrees. He stated that, “[b]ased on the range of motion testing for the thumb, radial abduction measurements and linear measurements of thumb adduction, the table for linear measurements of the thumb opposition and range of motion at [the] MCP and IPJ followed by grade modifier adjustments, he is at a [g]rade C, labeled thumb impairment values due to lack of radial abduction, reveals [three percent] thumb impairment due to range of motion.”

In a report dated January 19, 2011, OWCP's medical adviser noted that Dr. Bulmer found only the CMC joint was involved. The medical adviser stated that under Table 15-30 there was a two percent impairment for 40 degrees of abduction and five percent important for 30 degrees, therefore a four percent impairment if you split the difference. The date of maximum medical improvement was reported as January 7, 2010.

By decision dated January 25, 2011, OWCP issued schedule awards for four percent impairment to both thumbs. The period of the awards was six weeks commencing January 7, 2010.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

ANALYSIS

OWCP issued a schedule award decision based on its medical adviser's review of Dr. Bulmer's December 21, 2010 report. The medical evidence, however, requires further development to properly establish the permanent impairment in this case. As OWCP's medical adviser pointed out in his September 23, 2010 report, for the CMC joint the A.M.A., *Guides* requires measurements for radial abduction, adduction and opposition.⁴ Dr. Bulmer provided radial abduction results, but did not provide a specific measurement for adduction and reported opposition as "full" without providing the measurement in centimeters as required under Figure 15-20. In addition, he stated that there was normal range of motion in the MCP joint, yet he reported 45 degrees of flexion for the MCP joint, which would result in an impairment under Table 15-30.⁵ OWCP's medical adviser stated that Dr. Bulmer found only the CMC joint was involved, but did not discuss the MCP joint. The Board notes that Dr. Bulmer did not acknowledge that the reported flexion results would constitute an impairment under Table 15-30 or discuss causal relationship between any impairment and federal employment.

An appropriate medical report should contain all of the measurements required for a proper application of Table 15-30. The Board also notes that there is no provision under Table 15-30 for the method used by OWCP's medical adviser to "split the difference" in determining the impairment. The A.M.A., *Guides* clearly state that joint range of motion should be rounded to the nearest whole number ending in zero.⁶ If the 35 degrees CMC radial abduction is rounded to 30 degrees, for example, the thumb impairment is five percent under Table 15-30.⁷

The case will be remanded to OWCP to obtain a medical report with complete range of motion measurements and a rationalized medical opinion as to an employment-related permanent

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ *A. George Lampo*, 45 ECAB 441 (1994).

⁴ A.M.A., *Guides* 462, Table 15-13.

⁵ *Id.* at 468, Table 15-30.

⁶ *Id.* at 461.

⁷ *Supra* note 5.

impairment under the sixth edition of the A.M.A., *Guides*. After such further development as is deemed necessary, OWCP should issue an appropriate decision.

On appeal, appellant argued that the rating of Dr. Rogachefsky should be applied. As the OWCP's medical adviser discussed on September 23, 2010, the impairment identified by Dr. Rogachefsky under Table 15-2 for a class 3 impairment of 30 percent is for a CMC arthroplasty, with residual symptoms.⁸ There was no evidence of record that an arthroplasty was ever performed in this case. Dr. Rogachefsky failed to provide a reasoned opinion as to why the arthroplasty rating protocol would be appropriate in this case. His opinion is therefore of diminished probative value.

CONCLUSION

The Board finds that the case is not in posture for decision and is remanded for further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs January 25, 2011 is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: October 19, 2011

Washington, DC

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

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

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

⁸ *Id.* at 394, Table 15-2.