

FACTUAL HISTORY

On March 29, 2007 appellant, then a 45-year-old machine operator, filed a traumatic injury claim alleging that a metal gate fell on his left hand while in the performance of duty on March 26, 2007. OWCP accepted the claim for contusion of the left wrist and hand and ganglion of the left wrist joint. It paid benefits, including a recurrence of December 19, 2008 and September 21, 2010 excision of volar ganglion performed by Dr. Emery Kim, a Board-certified orthopedic surgeon. Appellant returned to full-time work full duty on October 18, 2010. On November 8, 2010 Dr. Kim advised that appellant could perform regular work and that no permanent effects were expected from his condition.

On December 17, 2010 appellant filed a claim for a schedule award. In a December 20, 2010 letter, OWCP advised him of the medical information required from his physician for a schedule award claim. On January 11, 2011 appellant advised OWCP that his physician would not make an impairment rating.

OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Stuart J. Gordon, a Board-certified orthopedic surgeon and second opinion examiner, for an impairment evaluation. Dr. Gordon examined appellant on February 3, 2011. He noted the history of injury and appellant's treatment and reported appellant's complaints of constant volar pain, feeling of weakness, and difficulty resting arm, wearing a watch and lifting objects. Dr. Gordon set forth his examination findings and provided an impression of residuals status post left wrist strain, post-traumatic volar ganglion, and status postsurgical excision and unrelated adjacent left carpometacarpal (CMC) arthritis. He opined that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), appellant had two percent impairment to the left upper extremity. Dr. Gordon stated that under Table 15-3, page 395 appellant fell under class 1 for wrist mass or ganglion cyst. He found that appellant had a grade 1 for functional history, physical examination and clinical studies, which resulted in a grade C or two percent left upper extremity impairment. Of the two percent impairment, Dr. Gordon related one percent to the work-related injury and the other one percent to unrelated CMC arthritis of the wrist.

In a February 28, 2011 report, an OWCP medical adviser reviewed the medical evidence of file, including Dr. Gordon's February 3, 2011 report. He found that appellant reached maximum medical improvement on February 3, 2011, the date of Dr. Gordon's evaluation. The medical adviser agreed with Dr. Gordon's method of evaluation and application of the sixth edition of the A.M.A., *Guides*.

By decision dated March 3, 2011, OWCP granted appellant two percent permanent impairment of the left upper extremity. The award ran for the period February 3 to March 18, 2011 for a total of 6.24 weeks.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.⁵ 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* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁸ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁹

It is well established that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.¹⁰ OWCP procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.¹¹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

⁶ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* 494-531.

⁹ *Id.* at 521.

¹⁰ *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7.a(2) (November 1998).

percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS

OWCP accepted that appellant sustained contusion of left wrist and hand and ganglion of the joint, left wrist while in the performance of duty on March 26, 2007. Appellant underwent excision of volar ganglion on September 21, 2010. He filed a claim for a schedule award and, by decision dated March 3, 2011 OWCP granted him a schedule award for two percent impairment of the left upper extremity.

The Board finds that appellant has no more than two percent impairment of the left arm. The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation. It requires identifying the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.¹³ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMC - CDX). As appellant's treating physician did not offer an impairment rating, OWCP referred appellant to Dr. Gordon for a second opinion examination and impairment rating. In a February 3, 2011 report, Dr. Gordon found that appellant had two percent permanent impairment under the sixth edition of the A.M.A., *Guides*. In reaching this determination, he reviewed the wrist regional grid, Table 15-3, page 395, as applicable for a class 1 wrist mass or ganglion cyst with a default value of two percent. Dr. Gordon then adjusted the diagnosis by grade modifiers according to the formula noted above. He found that appellant had grade modifiers of one for functional history, physical examination and clinical studies under Table 15-7, Table 15-8 and Table 15-9. Under the net adjustment formula noted, this would equate to zero, or no net adjustment from the default value. The Board finds two percent upper extremity impairment.¹⁴

OWCP's medical adviser agreed with Dr. Gordon's method of evaluation and application of the sixth edition of the A.M.A., *Guides*. There is no medical evidence of record supporting greater impairment than the two percent left lower extremity impairment already awarded.

On appeal, appellant contends that the residual pain from his work-related injury is interfering with his work. He also stated that he began physical therapy. 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 permanent impairment or increased impairment.

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹³ A.M.A., *Guides* 405-12.

¹⁴ Although Dr. Gordon sought to apportion appellant's impairment between the accepted condition and the preexisting condition, the Board notes that impairments from preexisting conditions are to be included. See *supra* notes 10, 11.

CONCLUSION

The Board finds that appellant has no more than two percent total permanent impairment of the left upper extremity, which was previously paid.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2012
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