United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
and	)	**Docket No. 12-1252**
	)	**Issued: October 23, 2012**
DEPARTMENT OF THE AIR FORCE, MECHANICAL DEPARTMENT, WRIGHT-PATTERSON AIR FORCE BASE, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 23, 2012 appellant filed a timely appeal from the February 3, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) granting a schedule award. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a five percent permanent impairment of his left arm, for which he received a schedule award.

[1] 5 U.S.C. §§ 8101-8193.

[2] On appeal, appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, DC. No written confirmation was received; thus the Board has decided the appeal on the record.

FACTUAL HISTORY

OWCP accepted that on October 4, 2010 appellant, then a 57-year-old air conditioning equipment mechanic, sustained a Boutonniere Deformity of his left small finger when he stubbed it reaching for a basketball during physical training at work. It later expanded the accepted conditions to include "other acquired deformity" of his left small finger. Appellant did not stop work at that time.

On May 3, 2011 Dr. Christopher Danis, an attending surgeon, performed contracture release surgery on the proximal interphalangeal joint of appellant's left small finger. The procedure was authorized by OWCP. Appellant returned to full duty without restrictions about six weeks after his surgery.

On September 2, 2011 appellant filed a claim for a schedule award due to his accepted work injury. In a September 13, 2011 letter, OWCP advised him that a medical report containing an opinion on his permanent impairment was needed. The impairment rating was to be calculated under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). A letter requesting an impairment rating was also sent to Dr. Danis.

Dr. Danis responded in a September 20, 2011 letter noting that he did not perform such medical evaluations. He advised that appellant had reached maximum medical improvement as of August 15, 2011.

OWCP referred appellant to Dr. Edward G. Fisher, a Board-certified orthopedic surgeon, for an examination and opinion on the extent of his permanent impairment.

In a November 16, 2011 report, Dr. Fisher detailed appellant's medical history and reported the findings of his examination, including range of finger motion testing. Appellant had a full range of motion in the thumb and fingers of his left hand except for the small finger. Dr. Fisher noted that appellant reported having some mild soreness over the proximal interphalangeal joint of his left small finger. He opined that appellant continued to suffer residuals of the accepted work injury, but had reached maximum medical improvement in August 2011. Dr. Fisher noted that under Table 15-31 on page 470 of the sixth edition of the A.M.A., *Guides*, appellant had zero percent permanent impairment of his left small finger due to extension of 10 degrees and flexion of 110 degrees of the metacarpophalangeal joint. For his proximal interphalangeal joint, appellant had 14 percent impairment due to extension lag of 40 degrees and 21 percent impairment due to flexion of 55 degrees. For his distal interphalangeal joint, he had 0 percent impairment for no extension lag and 25 percent impairment for flexion of 10 degrees. Dr. Fisher stated that adding these impairment values equaled 60 percent digit impairment for decreased range of motion in the left small finger and noted that converting the digit impairment to an upper extremity impairment, using Table 15-12 on pages 421 through 423, would render a left upper extremity impairment of 5 percent.

Dr. Fisher's report was reviewed by Dr. Brian M. Tonne, a Board-certified orthopedic surgeon serving as an OWCP medical adviser. In a January 21, 2012 report, Dr. Tonne opined that appellant had reached maximum medical improvement on August 15, 2011. Using Table

15-31, he provided an assessment of the impairment of appellant's left small finger which was in accordance with the assessment of Dr. Fisher (yielding 5 percent impairment when converted to the left arm under Table 15-12). Dr. Tonne noted that Dr. Fisher did not provide a functional history grade adjustment under Table 15-7 on page 406, but indicated that appellant's impairment was consistent with grade modifier 1. He stated that, under Table 15-35 on page 477, appellant had a grade modifier 1 for range of motion grade modifiers. Dr. Tonne indicated that, under Table 15-36 on page 477, no adjustment was necessary when the grade modifiers from Table 15-7 and Table 15-35 were equal. He concluded that appellant had a five percent impairment of his left arm.

In a February 3, 2012 award of compensation, OWCP granted appellant a schedule award for a five percent permanent impairment of his left arm. The award ran for 15.6 weeks from August 15 to December 2, 2011.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing regulations[4] 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 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.[5] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[6]

Table 15-31 on page 470 of the sixth edition of the A.M.A., *Guides* provides guidelines for evaluating impairment due to limited finger motion.[7] An impairment rating for a given digit may be converted to an impairment rating for an upper extremity using Table 15-12 on pages 421 through 423.[8] In order to determine whether a grade adjustment should be made due to functional history grade, reference is made to Table 15-7 on page 406 and Table 15-35 and Table 15-36 on page 477.[9]

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id*.

[6] FECA Bulletin No. 09-03 (issued March 15, 2009).

[7] A.M.A., *Guides* 470, Table 15-31.

[8] *Id.* at 421-23, Table 15-12.

[9] *Id.* at 406, 477, Table 15-7, Table 15-35 and Table 15-36.

ANALYSIS

OWCP accepted that appellant sustained a Boutonniere Deformity and other acquired deformity of his left small finger when he stubbed it reaching for a basketball during physical training at work. In a February 3, 2012 award of compensation, it granted him a schedule award for five percent permanent impairment of his left arm. The award was based on a January 21, 2012 report of Dr. Tonne, a Board-certified orthopedic surgeon serving as an OWCP medical adviser. Dr. Tonne had evaluated a November 16, 2011 report of Dr. Edward G. Fisher, a Board-certified orthopedic surgeon serving as an OWCP referral physician.

The Board finds that utilizing Dr. Fisher's examination findings, Dr. Tonne properly determined that, under the sixth edition of the A.M.A., *Guides*, appellant had five percent permanent impairment of his left arm based on the impairment of his left small finger. Dr. Tonne noted that, under Table 15-31 on page 470, appellant had no impairment due to the motion findings for the metacarpophalangeal joint. For his proximal interphalangeal joint, appellant had 14 percent impairment due to extension lag of 40 degrees and 21 percent impairment due to flexion of 55 degrees. For his distal interphalangeal joint, he had no impairment for no extension lag and 25 percent impairment for flexion of 10 degrees.[10] These impairment values equaled a 60 percent digit impairment for decreased range of motion in the left small finger, which when converted to an upper extremity impairment using Table 15-12 on page 422, equaled a left upper extremity impairment of five percent.

Dr. Tonne correctly found that, under Table 15-7 on page 406, appellant's condition represented a mild problem and was consistent with grade modifier 1. He stated that, under Table 15-35 on page 477, appellant had a grade modifier 1 for range of motion grade modifiers. Dr. Tonne indicated that, under Table 15-36 of page 477, no adjustment was necessary when the grade modifiers from Table 15-7 and Table 15-35 were equal. Therefore, he properly concluded that appellant had a five percent impairment of his left arm. Appellant has not submitted medical evidence showing entitlement to a greater amount of schedule award compensation.[11]

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 did not meet his burden of proof to establish that he has more than a five percent permanent impairment of his left arm, for which he received a schedule award.

[10] *See supra* note 7.

[11] On appeal, appellant referenced the pain symptoms in his left small finger, but such symptoms were considered in calculating the functional history as described above. He indicated that he needed compensation for treatment and pain medication, but his entitlement to medical care is not the subject of the present appeal.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2012
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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