

FACTUAL HISTORY

OWCP accepted that on April 30, 2001 appellant, then a 55-year-old clerk, sustained bilateral thumb strain and left trigger thumb with surgical release under file number xxxxxx864. It had previously accepted that she sustained trigger finger of the right index and thumb under file number xxxxxx390 and bilateral shoulder strain under file number xxxxxx888. In a report dated February 1, 2002, issued in file number xxxxxx864, an OWCP medical adviser determined that appellant had 21 percent permanent impairment of the left thumb due to loss of motion and sensory impairment.

By decision dated November 12, 2003, OWCP granted appellant a schedule award for seven percent permanent impairment of the right upper extremity under file number xxxxxx888. It based the award on loss of shoulder motion and pain in the suprascapular nerve following an arthroscopic decompression of the right shoulder.

In a report dated September 14, 2010, Dr. James D. Schlenker, a Board-certified surgeon, discussed appellant's March 9, 2010 surgical trigger finger release of the right thumb and ring finger. On examination he found essentially normal two-point discrimination of the hands bilaterally. Dr. Schlenker measured "full range of motion of the fingers, wrist, elbow and shoulder. There is no residual triggering activity." He further found "tenderness and swelling in the distal palm at the base of the ring finger, but no significant swelling over the metacarpophalangeal joint of the thumb." Dr. Schlenker measured grip strength in appellant's dominant right hand of 22 pounds and in her left hand of 42 pounds. He opined that she needed no further treatment and that she had "a satisfactory result following release of triggering of the right thumb and ring finger."

On November 5, 2010 appellant requested a schedule award based on Dr. Schlenker's evaluation. By letter dated November 22, 2010, OWCP requested that a medical adviser review the evidence and address whether she had an additional impairment of the left upper extremity beyond the previously awarded 21 percent left upper extremity impairment. On November 28, 2010 OWCP's medical adviser advised that appellant had a six percent left upper extremity impairment due to her left trigger finger release. He further opined that she had one percent impairment due to left shoulder strain for a total upper extremity impairment of seven percent. The medical adviser noted that appellant was not entitled to an additional award for the left upper extremity as she had previously received a schedule award for 21 percent impairment rating.

On January 25, 2011 OWCP informed appellant by telephone that it would again refer her case to an OWCP medical adviser, noting that it originally asked that the medical adviser address the extent of impairment of the left rather than right hand. By letter dated January 25, 2011, it requested that OWCP's medical adviser address whether appellant had more than the previously awarded seven percent permanent impairment of the right upper extremity under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).

On February 2, 2011 the medical adviser discussed appellant's history of an award for seven percent right upper extremity impairment as the result of a shoulder injury. He reviewed Dr. Schlenker's finding that appellant had "good ROM [range of motion] and mild tenderness to

palpation” following a release of right trigger finger. The medical adviser found that, under Table 15-2 on page 391 of the sixth edition of the A.M.A., *Guides*, her minimal symptoms following trigger finger surgery yielded no impairment.

By decision dated February 17, 2011, OWCP denied appellant’s claim for an increased schedule award. It noted that it had also reviewed evidence in file numbers xxxxxx390 and xxxxxx888 and concluded that it did not show an increased impairment beyond the previously paid schedule awards.

On appeal appellant argues that she is entitled to a schedule award for an impairment to her right ring finger and thumb. She further challenges the left upper extremity award.

LEGAL PRECEDENT -- ISSUES 1 & 2

The schedule award provision of FECA,³ and its implementing federal 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

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).⁷ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral thumb strain, bilateral trigger thumb and triggering of the right index finger, bilateral shoulder strain and right shoulder impingement syndrome due to factors of her federal employment in file numbers xxxxxx864, xxxxxx390 and xxxxxx888. It granted her a schedule award for a seven percent permanent impairment of the right upper extremity due to loss of shoulder motion and shoulder pain in file number xxxxxx888.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ 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).

⁷ A.M.A., *Guides* 494-531.

On November 5, 2010 appellant requested an increased schedule award. In support of her claim, she submitted a September 14, 2010 report from Dr. Schlenker, who discussed her history of a right thumb and right finger trigger release. Dr. Schlenker found normal range of motion of the fingers, wrist, elbow and shoulder and normal two-point discrimination of the bilateral hands. He further found that appellant had some tenderness and swelling at the base of her ring finger and a loss of grip strength. Dr. Schlenker advised that she needed no further medical treatment. He did not address the issue of whether appellant had an employment-related impairment or provide an impairment rating of a scheduled member based on the A.M.A., *Guides*. The Board finds, therefore, that the report of Dr. Schlenker is of diminished probative value and insufficient to establish entitlement to a schedule award.

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, OWCP may rely on the opinion of an OWCP medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.⁸ An OWCP medical adviser reviewed Dr. Schlenker's report on February 2, 2011. He noted that Dr. Schlenker found that appellant had a good result following her right trigger finger surgery with no loss of motion and minimal tenderness. The medical adviser determined that, under Table 15-2, appellant had no permanent impairment based on her mild complaints after her surgery. The Board finds that the medical adviser's report constitutes the weight of the evidence and establishes that appellant is not entitled to an increased schedule award. There is no probative evidence of record supporting that appellant has an impairment of the thumb or finger entitling her to a schedule award.

On appeal appellant argues that she is entitled to a schedule award for an impairment of the right ring finger and thumb but the issue in this case is medical in nature and must be resolved through the submission of probative medical evidence.⁹ She has the burden to submit medical evidence supporting the degree of permanent impairment.¹⁰

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.

ANALYSIS -- ISSUE 2

On February 1, 2002 an OWCP medical adviser found that appellant had a 21 percent permanent impairment of the left thumb. On November 22, 2010 OWCP indicated that appellant had received a schedule award for 21 percent permanent impairment of the left upper extremity. By decision dated February 17, 2011, it found that she had no more than the previously awarded 21 percent left upper extremity impairment. The record, however, does not contain a copy of the decision granting appellant either 21 percent permanent impairment of the left thumb or 21 percent permanent impairment of the left upper extremity. Consequently, the Board is unable to

⁸ See *J.Q.*, 59 ECAB 366 (2008); *Linda Beale*, 57 ECAB 429 (2006).

⁹ See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ See *D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

render an informed adjudication regarding the extent of her left upper extremity impairment. The case is therefore remanded for reconstruction of the case record and any further development necessary to be followed by an appropriate *de novo* decision on this issue.

CONCLUSION

The Board finds that appellant has no more than seven percent right upper extremity impairment for which she received a schedule award. The Board further finds that the case is not in posture for decision regarding the extent of her left upper extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: September 20, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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