United States Department of Labor
Employees' Compensation Appeals Board

W.E., Appellant	)	
and	)	**Docket No. 13-341**
	)	**Issued: April 15, 2013**
U.S. POSTAL SERVICE, VEHICLE MAINTENANCE FACILITY, Jamaica, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 27, 2012 appellant through his attorney, timely appealed the June 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the schedule award claim.

ISSUE

The issue is whether appellant has a ratable impairment of the right upper extremity.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 22, 2004 appellant, then a 58-year-old automotive technician, injured his right hand in the performance of duty.[2] He underwent surgery on July 22, 2004 for traumatic amputation of distal right fourth digit (ring finger). Follow-up procedures which included a skin graft were performed on July 22 and August 12, 2004.[3] OWCP accepted appellant's claim for amputation -- fourth finger right hand and laceration -- third finger right hand.[4] Appellant received wage-loss compensation. On October 18, 2004 he returned to work in a part-time, limited-duty capacity. Approximately two years later, appellant began full-time, limited-duty work. He ultimately resumed his full duties on August 5, 2009.

On June 8, 2010 appellant filed a claim for a schedule award (Form CA-7). On June 15, 2010 OWCP advised him of the need to submit a right upper extremity impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides* 6th ed. 2008).

Appellant did not submit the requested information in a timely fashion, and therefore, OWCP denied his schedule award claim by decision dated July 19, 2010.

On July 13, 2011 counsel filed a request for reconsideration. He submitted an October 12, 2010 report from appellant's hand surgeon, Dr. Roger, who provided a chronology of the treatment that appellant received between July 22, 2004 and October 26, 2009. Dr. Roger indicated that following surgery appellant developed contractures of the digits of the right hand, as well as carpal tunnel syndrome. He attributed both conditions to appellant's July 22, 2004 employment injury.[5] At the conclusion of his chronology, Dr. Roger stated that appellant had injury-related permanent impairments of the right hand with respect to dexterity, grasp strength, mobility and sensation. He did not otherwise describe the extent of appellant's right hand impairment under the A.M.A., *Guides* (6th ed. 2008).[6]

OWCP reviewed the merits of the schedule award claim and denied modification by decision dated October 11, 2011. It noted that Dr. Roger had not stated whether appellant

[2] Appellant injured his right ring finger and little finger working on a seven-ton Ford vehicle. The engine was running while he was checking a heating hose. Appellant's right ring finger sustained the most damage.

[3] Dr. Ignatius D. Roger, a Board-certified hand surgeon, performed both surgical procedures.

[4] Although, appellant did not injure his middle finger in the performance of duty, the July 22, 2004 surgical procedure to repair his partially amputated ring (fourth) finger involved the utilization of tissue (cross-finger flap) from the uninjured middle (third) finger. The subsequent skin graft was necessary to restore tissue surgically removed from appellant's right middle finger.

[5] Appellant also had diagnostic evidence of left cubital tunnel syndrome; however, Dr. Roger stated that this condition was unrelated to the July 22, 2004 employment injury.

[6] Earlier in his report, Dr. Roger noted that based on appellant's September 19, 2007 examination findings, he had 10 percent impairment of the right upper extremity under the A.M.A., *Guides*. At the time, appellant reported moderate discomfort of the right hand during tasks such as driving. Dr. Roger also noted that there was no crepitus or triggering of any digits during his September 19, 2007 examination. Although he generally referenced the A.M.A., *Guides*, he did not explain how he arrived at his 10 percent right upper extremity impairment rating.

reached maximum medical improvement. Also, it was unclear whether Dr. Roger utilized the latest edition of the A.M.A., *Guides* (6th ed. 2008). Lastly, OWCP found that the October 12, 2010 narrative report did not include any calculations or medical rationale to support Dr. Roger's impairment assessment.

Counsel filed another request for reconsideration on March 5, 2012. The request was accompanied by a September 15, 2011 report from Dr. Roger, who found 13 percent right upper extremity impairment for loss of motion involving the right index, middle, ring and pinky (fifth) fingers. Dr. Roger found 25 percent digit impairment for the index, middle and ring fingers and 10 percent digit impairment for the pinky. Applying Table 15-11 and Table 15-12, A.M.A., *Guides* 420-21 (6th ed. 2008), he converted appellant's digit impairments to a 13 percent right upper extremity impairment.

On June 4, 2012 the district medical adviser (DMA) reviewed Dr. Roger's September 15, 2011 report and found it insufficient to establish a right upper extremity impairment under the A.M.A., *Guides* (6th ed. 2008). The DMA explained that while Dr. Roger rated appellant for motion deficits, he neglected to provide specific range of motion measurements for the affected digits as required under Table 15-31, Finger Range of Motion, A.M.A., *Guides* 470 (6th ed. 2008).

In a June 8, 2012 decision, OWCP again denied modification.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[7] FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[8] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).[9]

ANALYSIS

Appellant bears the burden of demonstrating his entitlement to benefits under FECA.[10] In June 2010, OWCP advised him and counsel of the necessity of submitting an impairment

[7] For a total or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

[8] 20 C.F.R. § 10.404.

[9] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (.

[10] 20 C.F.R. § 10.115(f).

rating in accordance with the A.M.A., *Guides* (6th ed. 2008). The requested medical evidence was not received within a reasonable timeframe, and therefore, OWCP initially denied appellant's claim for a schedule award on July 19, 2010. Since then counsel has requested reconsideration twice and OWCP has received two reports from appellant's hand surgeon.

Dr. Roger's October 12, 2010 report was essentially a chronology of the treatment appellant received from July 22, 2004 through October 26, 2009. He described appellant's symptoms, physical findings and the results of diagnostic studies at various times during the 5-plus years he treated appellant. The reported findings from Dr. Roger's October 26, 2009 examination were sparse.[11] At the end of his chronology, Dr. Roger stated that appellant had permanent impairment with respect to dexterity, grasp strength, mobility and sensation involving the right dominant hand. He attributed the noted impairments to appellant's July 22, 2004 employment injury, but failed to quantify the extent of appellant's right upper extremity impairment in accordance with the A.M.A., *Guides* (6th ed. 2008). Additionally, Dr. Roger did not identify any specific findings that the DMA might otherwise rely upon in determining the existence and extent of impairment. Before a case can be referred to the DMA, the attending physician should describe the impairment in sufficient detail to permit clear visualization of the impairment and the restrictions and limitations which have resulted.[12]

In his September 15, 2011 report, Dr. Roger purportedly rated appellant for loss of finger motion under the A.M.A., *Guides* (6th ed. 2008).[13] He found 13 percent right upper extremity impairment for loss of motion involving the right index, middle, ring and pinky (fifth) fingers. Dr. Roger assigned individual digit impairments and then explained how he converted the respective digit impairments to hand and upper extremity impairment. However, as the DMA correctly noted, Dr. Roger neglected to provide range of motion measurements to support the individual digit impairments he assigned.[14]

The current record does not support appellant's claim for a schedule award with respect to his July 22, 2004 right upper extremity employment injury. Accordingly, OWCP properly denied his claim.

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.

[11] Dr. Roger noted appellant's grasp strength, he referenced an electrodiagnostic study that reportedly showed right carpal tunnel syndrome and described individual finger mobility relative to the hand's distal palmar and proximal palmar creases.

[12] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3a(2) (January 2010).

[13] Although his reasoning is unclear, Dr. Roger apparently opted not to rate appellant's right ring finger partial amputation under Table 15-29, Amputation Impairment, A.M.A., *Guides* 460 (6th ed. 2008).

[14] *See* A.M.A., *Guides* 470 Table 15-31 (6th ed. 2008).

CONCLUSION

Appellant failed to establish that he has a ratable impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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