

In an October 4, 2012 report, Dr. Mattox made note of appellant's May 2, 2012 surgery and indicated that, after a period of recovery, appellant was released from his care with a date of maximum medical improvement of July 27, 2012. He stated, "Because of the position and nature of the surgery, [appellant] has two percent upper extremity, one percent whole person impairment rating. Diagnosis was instability of his thumb [MCP] joint secondary to the injury. [Appellant] had significant dysfunction prior to his surgery."

OWCP requested that Dr. Howard Hogshead, a Board-certified orthopedic surgeon, serve as an OWCP medical adviser and evaluate the evidence of record (including Dr. Mattox' reports) to determine the extent of appellant's permanent impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009).

On October 10, 2012 Dr. Hogshead indicated that the May 2, 2012 surgery was necessary due to the chronic instability. He stated that the hand regional grid does not include a regional grid for arthrodesis of the MCP joint of the thumb. Dr. Hogshead further noted, "[A.M.A., *Guides*] page 465 states that the [MCP] joint is 10 percent of the thumb. Table 15-11, page 420, states that 10 percent of thumb [equals] four percent of hand [which equals] four percent of upper extremity." He indicated that the October 4, 2012 report of Dr. Mattox provided a two percent impairment of appellant's right arm but opined that this rating was "not documented or referenced." Dr. Mattox listed July 27, 2012 as the date of maximum medical improvement.

OWCP asked Dr. Hogshead to clarify whether appellant's schedule award should be for his right thumb (10 percent) or for his right hand (four percent). On October 17, 2012 Dr. Hogshead noted that OWCP policy was to state impairment of the digit if only one digit is involved. If there are two or more digits, the impairment is given in terms of the hand.

In a November 20, 2012 decision, OWCP granted appellant a schedule award for 10 percent permanent impairment of his right thumb. The award ran for 7.5 weeks from July 28 to September 18, 2012. The award was based on the impairment rating of Dr. Hogshead, the medical adviser.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

appropriate standard for evaluating schedule losses.⁴ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁵

Section 15.7c on page 465 of the sixth edition of the A.M.A., *Guides* provides that MCP joint flexion and extension have been assigned a 10 percent contribution to the entire right thumb on a 100 percent scale. Interphalangeal joint flexion and extension contribute 15 percent to the 100 percent scale and carpometacarpal joint motions (radial abduction, adduction and opposition) contribute the remaining 75 percent to the 100 percent scale.⁶

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁷

ANALYSIS

OWCP accepted that appellant sustained an unspecified closed fracture of the metacarpal bone of his right thumb when he hit his hand on a postal machine on March 17, 2010. On May 2, 2012 Dr. Mattox an attending Board-certified orthopedic surgeon, performed OWCP-authorized surgery in the form of arthrodesis of the MCP joint of appellant's right thumb.

In a November 20, 2012 decision, OWCP granted appellant a schedule award for a 10 percent permanent impairment of his right thumb. The award ran for 7.5 weeks from July 28 to September 18, 2012. The award was based on the impairment rating of Dr. Hogshead, a Board-certified orthopedic surgeon who served as an OWCP medical adviser. Dr. Hogshead was asked by OWCP to evaluate the evidence of record, including Dr. Mattox' reports, to determine the extent of appellant's permanent impairment under the standards of the sixth edition of the A.M.A., *Guides*.

In his October 10, 2012 report, Dr. Hogshead noted, "[A.M.A., *Guides*] page 465 states that the [MCP] joint is 10 percent of the thumb. Table 15-11, page 420, states that 10 percent of thumb [equals] four percent of hand [which equals] four percent of upper extremity." On October 17, 2012 he suggested that appellant's schedule award should be based on his right thumb impairment (10 percent) rather than on his right hand impairment (four percent).

OWCP based its granting of a schedule award for a 10 percent permanent impairment of the right thumb on this aspect of Dr. Hogshead's opinion. However, Dr. Hogshead's ostensible impairment rating is not properly based on the standards of the sixth edition of the A.M.A., *Guides*. He referenced Section 15.7c on page 465 of the sixth edition, but this section merely provides that MCP joint flexion and extension have been assigned a 10 percent contribution to the entire right thumb on a 100 percent scale.⁸ This section does not provide any independent method

⁴ *Id.*

⁵ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁶ A.M.A., *Guides* 465, Section 15.7c.

⁷ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

⁸ Interphalangeal joint flexion and extension contribute 15 percent to the 100 percent scale and carpometacarpal joint motions (radial abduction, adduction and opposition) contribute the remaining 75 percent to the 100 percent scale. See *supra* note 6.

to rate thumb impairment without reference to other portions of the A.M.A., *Guides*, such as Table 15-30 (Thumb Range of Motion) on page 468. Dr. Hogshead did not reference such additional portions of the A.M.A., *Guides* to explain his rating. The record contains an October 4, 2012 report in which Dr. Mattox indicated that appellant had two percent impairment of his right arm, but Dr. Mattox' rating also is of little probative value because he did not explain how it was derived in accordance with the standards of the A.M.A., *Guides*.

The record is currently lacking a rationalized medical report explaining the extent of appellant's impairment due to his accepted right thumb injury under the relevant standards of the sixth edition of the A.M.A., *Guides*. For these reasons, additional development is needed to determine the extent of appellant's permanent impairment and whether he is entitled to schedule award compensation in addition to that which he received for 10 percent permanent impairment of his right thumb. The case shall be remanded to OWCP for this purpose and, after such development as it deems necessary, OWCP shall issue an appropriate decision regarding appellant's permanent impairment.

CONCLUSION

The Board finds that the case is not posture for decision regarding whether appellant has more than a 10 percent permanent impairment of his right thumb, for which he received a schedule award. The case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: August 21, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board