

United States Department of Labor  
Employees' Compensation Appeals Board

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G.J., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Houston, TX, Employer

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Docket No. 13-151  
Issued: November 19, 2013

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 25, 2012 appellant filed a timely appeal from an October 10, 2012 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has more than one percent permanent impairment of the left arm for which he received a schedule award.

On appeal, appellant contends that the medical evidence shows that he is entitled to a greater award. He also contends that the case should have been referred to an impartial medical examiner.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> On the same date, October 10, 2012, OWCP also terminated appellant's compensation benefits. Appellant did not appeal from this decision and thus it is not before the Board on this appeal. See 20 C.F.R. § 501.3(a).

## FACTUAL HISTORY

On December 27, 2007 appellant, then a 42-year-old motor vehicle operator, sustained traumatic injury when an all-purpose container door fell open and smashed his finger against another container. OWCP accepted his claim for a laceration of the left hand middle finger, left wrist sprain, enthesopathy left wrist/finger and contracture of joint in left hand. It paid wage-loss compensation and medical benefits. On September 20, 2010 appellant underwent reconstructive surgery on his left middle finger.

Appellant was referred by his attending physician, Dr. Mark D. Khorsandi, an osteopath and Board-certified hand surgeon, to Dr. Rogello G. Rodriguez, a chiropractor, who diagnosed appellant with status postoperative, left hand, middle finger; and joint contracture, left hand, middle finger. Dr. Rodriguez indicated that his evaluation was also “approved by the adjuster.” He opined that appellant had reached maximum medical improvement as of that date. Utilizing Table 15-2 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009) (A.M.A., *Guides*),<sup>3</sup> Dr. Rodriguez assessed appellant’s diagnosed condition (CDX) as class 1 -- grade C, then modified this figure by noting a grade modifier for Functional History (GMFH) of 2,<sup>4</sup> a grade modifier for Physical Examination (GMPE) of 3,<sup>5</sup> and a grade modifier for Clinical Studies (GMCS) of 0.<sup>6</sup> After applying the formula set forth in the A.M.A., *Guides*, he indicated that the grade modifiers changed appellant’s rating from class 1 -- grade C to class 1 -- grade E. Dr. Rodriguez concluded that appellant had eight percent impairment to his left hand based on the sixth edition of the A.M.A., *Guides*.

On August 9, 2012 appellant filed a claim for a schedule award.

By memorandum dated August 21, 2012, OWCP referred the case record to a medical adviser for review. In an August 27, 2012 report, Dr. H. Mobley, an OWCP medical adviser, stated that, based on Dr. Rodriguez’s report, he found that appellant had one percent impairment of the left arm under the A.M.A., *Guides*. He noted that, based on the injury to appellant’s left middle finger, diagnostic key factor was stenosing tenosynovitis. Appellant was classified as class 1 -- grade C, which was six percent impairment of the middle finger.<sup>7</sup> He then applied the modifiers under the A.M.A., *Guides*. Dr. Mobley noted that, based on the report of Dr. Rodriguez, appellant had a GMPE grade modifier of 3,<sup>8</sup> a GMCS grade modifier of 0, and a GMFH grade modifier of 2. Applying the formula under the A.M.A., *Guides*, he had an extra two percent impairment of the finger. Dr. Mobley concluded that appellant’s final grade after the net adjustment was grade E that represented eight percent impairment of the digit. He then noted that an eight percent impairment of the middle finger equaled one percent impairment of

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<sup>3</sup> A.M.A., *Guides* 392, Table 15-2.

<sup>4</sup> *Id.* at 406, Table 15-9.

<sup>5</sup> *Id.* at 408, Table 15-8.

<sup>6</sup> *Id.* at 410-11, Table 15-9.

<sup>7</sup> *Id.* at 392, Table 15-2.

<sup>8</sup> *Id.* at 408, Table 15-8.

the left arm under the A.M.A., *Guides*.<sup>9</sup> Dr. Mobley noted that Dr. Rodriguez's worksheet incorrectly indicated an eight percent impairment of the left upper extremity instead of an eight percent impairment to the middle digit.

By decision dated October 10, 2012, OWCP granted appellant a schedule award for one percent impairment of the left arm.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>10</sup> and its implementing regulations<sup>11</sup> 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.<sup>12</sup>

For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>13</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.<sup>14</sup> It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.<sup>15</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International classification of Functioning, Disability and Health (ICF).<sup>16</sup> Under the sixth edition of the A.M.A., *Guides*, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.<sup>17</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>18</sup>

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<sup>9</sup> *Id.* at 421, Table 15-12.

<sup>10</sup> 5 U.S.C. § 8107.

<sup>11</sup> 20 C.F.R. § 10.404.

<sup>12</sup> *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>14</sup> *See* FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>15</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>16</sup> A.M.A., *Guides*, *supra* note 3 at 3, section 1.3, ICF: A Contemporary Model of Disablement.

<sup>17</sup> *Id.* at 385-419.

<sup>18</sup> *Id.* at 411.

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.<sup>19</sup>

### ANALYSIS

Appellant's claim was accepted by OWCP for laceration of the left hand middle finger, left wrist sprain, enthesopathy left wrist/finger and contracture of joint in left hand. He filed a claim for a schedule award.

Dr. Rodriguez rated appellant's impairment under the sixth edition of the A.M.A., *Guides* as eight percent impairment of the left hand. Dr. Mobley, a medical adviser, used the findings from the physical examination by Dr. Rodriguez. Applying Table 15-2 of the A.M.A., *Guides*, he determined that appellant had a diagnosed condition (CDX) of class 1 -- grade C based on the key factor of stenosing tenosynovitis of the left middle finger. This yielded an impairment rating of six percent. Both physicians used the same grade modifiers: GMFH of 2, GMPE of 3 and GMCS of 0. As noted, the net adjustment formula for determining impairment is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>20</sup> Both physicians calculated the formula in the same manner, noting (2-1) + (3-1) + (0-1) = 2. Based on the net adjustment formula appellant was grade E, which represented eight percent impairment of the finger. However, Dr. Rodriguez determined that the rating was of eight percent impairment to the left hand. He was mistaken: Table 15-2 of the A.M.A., *Guides* clearly indicates that the eight percent figure represents impairment of the digit.<sup>21</sup> Dr. Mobley properly completed the calculation and noted that, pursuant to Table 15-12 of the A.M.A., *Guides*,<sup>22</sup> an eight percent impairment of appellant's middle finger converted to one percent impairment of the left upper extremity.

The Board has held that where the residuals of an injury to a scheduled member of the body extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into a hand, or a hand into the arm, the schedule award should be made on the basis of the percentage loss of use to the larger member.<sup>23</sup> The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). According to the schedule, eight percent impairment of the second finger (middle digit) is 2.4 weeks based on a maximum of 30 weeks; one percent impairment of the arm yields 3.12 weeks of compensation based on a maximum of 312 weeks.<sup>24</sup> Appellant's schedule award was based on the left arm as the larger member. Accordingly, the Board finds that the weight of

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<sup>19</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability, Claims*, Chapter 2.808.6(d) (August 2002).

<sup>20</sup> A.M.A., *Guides* 411.

<sup>21</sup> *Id.* at 392, Table 15-2.

<sup>22</sup> *Id.* at 421, Table 15-12.

<sup>23</sup> *K.H.*, Docket No. 09-2143 (issued May 17, 2010).

<sup>24</sup> 20 C.F.R. § 8107(c).

the medical evidence is represented by the opinion of Dr. Mobley and established that appellant has one percent impairment of his left arm.

Appellant contends on appeal that, due to a conflict in medical opinion, an impartial medical examiner should have been appointed. The Board notes that appellant contended on appeal that his physician found a higher impairment using the fourth edition of the A.M.A. *Guides*. However, for all decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* must be used.<sup>25</sup> Furthermore, Dr. Rodriguez failed to properly convert the rating. Dr. Mobley properly applied the sixth edition of the A.M.A., *Guides* and there is no conflict of medical opinion.<sup>26</sup>

Appellant may request a schedule award or increased schedule award based on evidence of 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 establish that he had more than one percent permanent impairment of the left upper extremity for which he received a schedule award.

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<sup>25</sup> *Supra* note 14.

<sup>26</sup> *See B.L.*, Docket No. 11-213 (issued September 21, 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 10, 2012 is affirmed.

Issued: November 19, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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