

**United States Department of Labor
Employees' Compensation Appeals Board**

J.L., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
Pine Valley, CA, Employer**

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**Docket No. 13-996
Issued: September 5, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 11, 2013 appellant filed a timely appeal from the September 14, 2012 Office of Workers' Compensation Programs' (OWCP) schedule award decision. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

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

FACTUAL HISTORY

On July 7, 2010 appellant, then a 43-year-old border patrol agent, injured his right index finger while trying to untie a tire drag with a metal chain at work. He did not stop work. OWCP accepted the claim for right hand sprain, metacarpophalangeal, right hand/wrist tenosynovitis and

¹ 5 U.S.C. § 8101 *et seq.*

right index finger ganglion cyst. Appellant underwent authorized right index finger tenosynovectomy and cyst excision on December 3, 2010. He received appropriate compensation benefits.

On October 4 and November 23, 2011 appellant filed a claim for a schedule award. In support of his claim, he provided a March 28, 2011 report from Dr. Thomas W. Harris, an orthopedic surgeon, who noted appellant's history of injury and treatment and provided an impairment rating utilizing the sixth edition of the American Medical Association, *Guides* to the Evaluation of Permanent Impairment (hereinafter A.M.A., *Guides*). Dr. Harris noted examination findings and explained that appellant underwent a right index finger surgical procedure for cyst excision and tenosynovectomy. He referred to Table 15-2² and determined that appellant had six percent impairment of the right arm. Dr. Harris indicated that appellant reached maximum medical improvement.

In a November 10, 2011 report, OWCP's medical adviser noted appellant's history of injury and treatment and utilized the A.M.A., *Guides*. She determined that he had a one percent impairment of the right upper extremity. The medical adviser explained that the accepted conditions included: right hand sprain and wrist tendinitis, metacarpophalangeal, ganglion cyst with right index finger cyst excision and tenosynovectomy. She referred to Table 15-2³ and explained that appellant qualified for a class 1, default position C, translating to six percent for the digit. The medical adviser indicated that a grade modifier for Clinical Studies (GMCS) was not applicable. Regarding grade modifiers for Physical Examination (GMPE) and Functional History (GMFH), she indicated that appellant qualified for a grade modifier 1 for each pursuant to Table 15-8 and Table 15-7.⁴ The medical adviser explained that this translated to one percent hand impairment and also one percent upper extremity impairment under Table 15-12.⁵ She opined that appellant reached maximum medical improvement on March 28, 2011.

Accordingly, on December 7, 2011 OWCP granted appellant a schedule award for one percent permanent impairment of the right upper extremity. The award covered a period of 3.12 weeks from March 28 to April 18, 2011.

On August 7, 2012 appellant requested reconsideration. In support of his claim, he provided a March 21, 2012 report from Dr. Tal S. David, a Board-certified orthopedic surgeon, who noted appellant's history of injury and treatment and provided an impairment rating utilizing the fifth edition of the A.M.A., *Guides*.⁶ Dr. David opined that appellant sustained a 15 percent impairment of the right upper extremity.

² A.M.A., *Guides* 392.

³ *Id.*

⁴ *Id.* at 406, 408.

⁵ *Id.* at 421.

⁶ *Id.* at (5th ed. 2001).

In an August 30, 2012 report, OWCP's medical adviser explained that Dr. David utilized the fifth edition of the A.M.A., *Guides*⁷ to calculate appellant's schedule award but that the sixth edition was now the standard for impairment determinations. She again explained that appellant had six percent digit impairment under Table 15-2 which converted one percent right arm impairment under Table 15-12.

In a September 14, 2012 decision, OWCP denied modification of its prior decision. It found that the medical evidence was insufficient to establish increased right arm impairment.

LEGAL PRECEDENT

The schedule award provision of FECA⁸ and its implementing federal regulations⁹ 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.¹⁰ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹¹ For decisions issued after May 1, 2009, the sixth edition will be used.¹²

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). For upper extremity impairments, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.¹³ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁴ Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹⁵

ANALYSIS

Appellant's claim was accepted for right hand sprain, right hand/wrist tenosynovitis and right index finger ganglion cyst. He underwent authorized right index finger tenosynovectomy

⁷*Id.*

⁸5 U.S.C. § 8107.

⁹20 C.F.R. § 10.404.

¹⁰*Id.* at § 10.404(a).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

¹² FECA Bulletin No. 09-03 (issued March 15, 2009).

¹³ A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

¹⁴*Id.* at 521. *See also, R.Z.*, Docket No. 10-1915 (issued May 19, 2011).

¹⁵*J.W.*, Docket No. 11-289 (issued September 12, 2011).

and cyst excision on December 3, 2010. On October 4, 2011 appellant filed a claim for a schedule award. The Board finds that medical evidence of record establishes no more than one percent impairment for his right upper extremity.

In support of his claim, appellant submitted a March 28, 2011 impairment rating from Dr. Harris who found that, under Table 15-2, page 392, appellant had six percent right arm impairment for a tenosynovectomy. Although Dr. Harris did not specify the precise portion of the grid that he used, he apparently used the digital stenosing tenosynovitis diagnosis for which, under class 1, allows four to eight percent digit impairment with six percent being the grade C default impairment. However, he appears to confuse six percent impairment of the digit or finger, provided in the grid, for six percent arm impairment. Dr. Harris did not otherwise explain how, under the A.M.A., *Guides*, he arrived at six percent arm impairment under Table 15-2 which lists only impairment for digits. He also did not indicate what, if any grade modifiers he used in applying the net adjustment formula. On November 10, 2011 OWCP's medical adviser reviewed this report and found that, under Table 15-2, appellant had a default, grade C, six percent digit impairment. She set forth applicable grade modifiers used in the net adjustment formula and indicated that there was no change in the default six percent impairment rating for the digit. The medical adviser then determined that, under Table 15-12, six percent digit impairment equates to one percent arm impairment. The Board finds that Dr. Harris' impairment rating is insufficient to establish any greater impairment than that which appellant was awarded.

The Board also notes that Dr. David, in his March 21, 2012 report, utilized the fifth edition of the A.M.A., *Guides* in finding 15 percent arm impairment. However, effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.¹⁶ As Dr. David did not utilize the proper edition of the A.M.A., *Guides*, the Board finds that this impairment rating is of diminished probative value. OWCP's medical adviser, in an August 30, 2012 report, noted reviewing Dr. David's report and reiterated her prior impairment calculation under the sixth edition of the A.M.A., *Guides*.

Board precedent is well settled that when an attending physician's report gives an estimate of impairment but does not address how the estimate is based upon the A.M.A., *Guides*, OWCP is correct to follow the advice of its medical adviser or consultant where he has properly applied the A.M.A., *Guides*.¹⁷ The Board notes that, in her November 10, 2011 and August 30, 2012 reports, OWCP's medical adviser provided a rating of one percent right arm impairment under the sixth edition of the A.M.A., *Guides*. The record contains no current medical evidence which explains how, pursuant to the A.M.A., *Guides*, that appellant has greater than one percent impairment of the right arm.

On appeal, appellant argues that his treating physician and surgeon indicated that he had six percent arm impairment. However, as noted above, the reports provided by his physicians

¹⁶Federal (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); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

¹⁷*J.Q.*, Docket No. 06-2152 (issued March 5, 2008); *Laura Heyen*, 57 ECAB 435 (2006).

did not comport with the sixth edition of the A.M.A., *Guides* in explaining his calculation. Consequently, they do not establish any greater impairment.

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 one percent permanent impairment of his right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2013
Washington, DC

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

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

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