

accepted the claim for open fracture of the proximal phalanx or phalanges of the left thumb, open wound of the finger with tendon involvement, left index finger, open fracture base of thumb, (first) metacarpal, left. Appellant received compensation benefits.

In a July 9, 2013 emergency room report, Dr. James Higgins, Board-certified in plastic surgery and hand surgery, stated that a pistol fired about three inches from appellant's hand. He noted lacerations of the left thumb and index finger. The thumb had injury at the proximal phalanx both radial and ulnarly on the dorsal aspects with bleeding controlled. The index finger had a dorsal laceration over the metacarpophalangeal (MP) joint with the extensor tendon exposed and appearing injured. Imaging of the left hand showed a comminuted fracture of the left thumb, proximal phalanx, with minimal to no displacement. Dr. Higgins diagnosed left thumb proximal phalanx open fracture, index finger extensor tendon injury at the metacarpal level. He administered anesthesia to the hand and irrigated the wounds, noting evidence of injury to the extensor mechanism and about a 50 percent laceration to the extensor digitorum communis. The extensor was repaired and the wound was closed using sutures. The hand was then placed in a protective thumb splint and MP joint extension splint.

On October 1, 2013 appellant filed a claim for a schedule award.

By letter dated June 10, 2014, OWCP requested that appellant obtain an opinion from his treating physician regarding whether he reached maximum medical improvement and whether his accepted condition caused permanent impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter, A.M.A., *Guides*) (6th ed. 2009).

Appellant provided several reports from Dr. Keith A. Segalman, a Board-certified orthopedic surgeon. The reports included a July 26, 2013 report in which Dr. Segalman noted that appellant was seen for left hand complaints. Dr. Segalman advised that appellant sustained a gunshot wound to his left hand on July 9, 2013. He explained that appellant was seen at the emergency room and had an extensor repair of the index finger and irrigation of a fracture of the left thumb. Dr. Segalman examined appellant and advised that he recommended a closed pinning versus an open reduction and internal fixation, as an outpatient in the near future. He also explained that the procedure needed to be performed "quickly to avoid a malunited fracture." In an August 7, 2013 report, Dr. Segalman explained that they were going to allow the fracture to heal before considering an osteotomy. He indicated that appellant was scheduled for follow up in approximately four weeks and then he would begin a course of therapy. In an August 30, 2013 report, Dr. Segalman opined that appellant had residual contracture related to the malunion, but his function was greatly improved. He recommended a return to light duty and continued therapy. Dr. Segalman explained that, if appellant was still having difficulty in four weeks, they would consider an osteotomy, otherwise he would likely be at maximum medical improvement. In a September 27, 2013 report, he noted that appellant was status post gunshot wound to his left hand with malunion of his thumb. Dr. Segalman explained that appellant's function was greatly improved and appeared to be continuing to improve. He indicated that appellant was doing well with therapy, but they "could not guarantee that the patient would improve his motion and he may lose his motion. We may not necessarily make him better with the surgery at this point." Dr. Segalman recommended that appellant continue to live with his

current state and continue to work on exercises at home. He advised that appellant could return to full work status.

On November 21, 2014 OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record did not support a permanent impairment to a scheduled member or function of the body.

LEGAL PRECEDENT

The schedule award provision of FECA,² and its implementing federal regulations,³ 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.⁴ For decisions issued after May 1, 2009, the second printing of the sixth edition will be used.⁵

ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award in accordance with the sixth edition of the A.M.A., *Guides*.

OWCP accepted appellant's claim for open fracture of the proximal phalanx or phalanges of the left thumb, open wound of the finger with tendon involvement, left index finger, open fracture base of thumb, (first) metacarpal, left. Appellant claimed a schedule award on October 1, 2013. The record contains reports dating from July 26 to September 27, 2013 from appellant's treating physician, Dr. Segalman. However, Dr. Segalman did not provide any opinion in which he indicated that appellant had a permanent impairment pursuant to the A.M.A., *Guides*. On June 10, 2014 OWCP advised appellant of the type of evidence needed to establish his schedule award claim, but such evidence was not submitted. As appellant did not submit any medical evidence to support that he had ratable impairment of his hand or arm under the A.M.A., *Guides*, he has not established entitlement to a schedule award.

Following issuance of OWCP's November 21, 2014 decision, appellant offered additional evidence. However, the Board may not consider such evidence for the first time on appeal as its review is limited to the evidence that was before OWCP at the time of its decision.⁶ On appeal, appellant also asserted that OWCP did not properly develop his claim and that this resulted in a worsening of his condition. The Board notes that it only has jurisdiction over the

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.* at § 10.404(a).

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

⁶ *See* 20 C.F.R. § 501.2(c).

November 21, 2014 decision in which OWCP found that appellant had not established entitlement to a schedule award.⁷

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 has not met his burden of proof to establish that he was entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

⁷ The Board only has jurisdiction over adverse final decisions of OWCP. See 20 C.F.R. §§ 501.2(c) and 501.3(a).