

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

_____)	
L.W., Appellant)	
)	
and)	Docket No. 16-0537
)	Issued: August 18, 2016
U.S. POSTAL SERVICE, MAIN OFFICE)	
STATION, Greensboro, NC, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 29, 2016 appellant filed a timely appeal of an October 27, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has more than 19 percent permanent impairment of the right second finger, for which he previously received a schedule award.

On appeal appellant contends that he is entitled to a greater schedule award.

FACTUAL HISTORY

On November 20, 2014 appellant, then a 49-year-old sales distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a right middle finger

¹ 5 U.S.C. § 8101 *et seq.*

fracture when a dock plate caught his finger. He stopped work on November 20, 2014 and returned on November 28, 2014, with restrictions. OWCP accepted the claim for right second finger crush injury.

On June 15, 2015 Dr. Kevin R. Kuzma, a treating Board-certified orthopedic surgeon completed an evaluation for permanent impairment form in which he found 19 percent right second finger impairment. In an examination performed on June 15, 2015, he reported “intact sensation and capillary refill in all finger tips;” no tenderness, erythema, ecchymosis, or swelling, good finger range of motion; and some decreased sensation in the middle finger.

Appellant filed claims for a schedule award (Form CA-7).

On September 6, 2015 Dr. Kuzma indicated that maximum medical improvement (MMI) had been reached on June 15, 2015. Range of motion findings included 10 to 60 degrees for the distal interphalangeal (DIP) joint and 10 to 90 degrees for the proximal interphalangeal (PIP) joint, 0 to 85 degrees for the metacarpophalangeal (MCP) joint and two-point discrimination. Dr. Kuzma reported that appellant complained of decreased fingertip sensation. Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he found 12 percent digit or 2 percent hand impairment for DIP joint, 9 percent digit or 2 percent hand impairment for the PIP joint, and 7 percent digit or 1 percent hand impairment resulting in a total of five percent hand impairment.

In a September 14, 2015 report, OWCP’s medical adviser reviewed Dr. Kuzma’s reports and determined that appellant had 19 percent permanent impairment of the right middle finger. He found appellant had reached MMI on May 15, 2015. In reaching his impairment determination, the medical adviser used Table 15-31, page 470 and Table 15-16, page 427 to calculate the permanent impairment based on loss of range of motion and sensory loss. Using Table 15-31, page 427 he found 6 percent impairment for PIP 0 to 85 degrees, and 10 percent permanent impairment for DIP 10 to 60 degrees, resulting in a total of 16 percent permanent impairment for range of motion. Next, using Table 15-16, page 427 the medical adviser found three percent permanent impairment for sensory loss. He then combined the range of motion and sensory impairment (16 + 3) to find a total of 19 percent right second finger permanent impairment.

On October 23, 2015 OWCP’s medical adviser revised the date of MMI to June 15, 2015. He noted that he had made an error in his prior report regarding this date.

By decision dated October 27, 2015, OWCP granted appellant a schedule award for 19 percent permanent impairment of his right second finger. The period of the award covered June 15 to July 24, 2015 or 5.7 weeks.

LEGAL PRECEDENT

Under section 8107 of FECA² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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.⁴

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).⁵ Under the sixth edition, the evaluator identifies the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.⁸

ANALYSIS

OWCP accepted appellant's claim for right second finger crushing injury. By decision dated October 27, 2015, it granted him a schedule award for 19 percent permanent impairment of his right second finger.

In reports dated June 15 and September 6, 2015, Dr. Kuzma advised that appellant had 19 percent right second finger impairment or 5 percent hand impairment using the sixth edition of the A.M.A. *Guides* and that appellant reached maximum medical improvement on June 15, 2015. The Board notes, however, that he did not cite to any specific tables or pages in the A.M.A., *Guides* to support his rating.

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 may follow the advice of its medical adviser or consultant where he/she has properly applied the A.M.A., *Guides*.⁹

⁴ *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides* (6th ed., 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁶ *Id.* at pp. 383-419.

⁷ *Id.* at 411.

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

⁹ *J.Q.*, Docket No. 06-2152 (issued March 5, 2008); *Laura Heyen*, 57 ECAB 435 (2006).

In a September 14, 2015 report, OWCP's medical adviser reviewed Dr. Kuzma's reports and concurred with the 19 percent permanent impairment of the right second finger. Using Table 15-31, page 427 he found 6 percent impairment for PIP range of motion and 10 percent permanent impairment for DIP range, resulting in a total of 16 percent permanent impairment. The medical adviser found three percent impairment for sensory loss using Table 15-16, page 427. He then combined the range of motion and sensory impairment (16 + 3) to find a total of 19 percent permanent right second finger impairment. In his October 23, 2015 report, the medical adviser noted that he misstated the date of maximum medical improvement in his prior report and that the correct date was June 15, 2015.

The only medical report properly following the A.M.A., *Guides* in addressing appellant's impairment was from OWCP's medical adviser, who submitted a September 6, 2015 report following the assessment formula of the sixth edition of the A.M.A., *Guides*. The medical adviser utilized the clinical findings of Dr. Kuzma and concurred with the assessment of 19 percent permanent impairment of the right second finger and that maximum medical improvement had been reached on June 15, 2015.

The Board finds that there is no medical evidence of record properly following the A.M.A., *Guides* which provides a greater percentage of permanent impairment. Therefore, OWCP properly relied on the medical adviser's assessment of a 19 percent permanent impairment of the right second finger based on the sixth edition of the A.M.A., *Guides*.

On appeal appellant argues that he is entitled to a greater schedule as this injury has had a major impact on his quality of life and the monetary award was inadequate. He notes that as a result of this injury, his handwriting has changed, he has problems opening lids for his wife, his workout with weights has changed, and he faces challenges with tightening and unloosening items. As discussed above, the medical evidence of record only establishes entitlement to 19 percent permanent impairment of the right second finger. While 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.¹⁰ Appellant has not submitted any medical evidence establishing that he is entitled to a larger schedule award or monetary compensation due to residuals from the accepted second finger injury extending to the hand or arm.¹¹

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.

¹⁰ *G.J.*, Docket No. 13-0151, (issued November 19, 2013). The Board found that appellant's impairment of the middle finger caused stenosing tenosynovitis into the arm. See also *K.H.*, Docket No. 09-2143 (issued May 17, 2010).

CONCLUSION

The Board finds that appellant has not established greater than 19 percent permanent impairment of the right second finger, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 27, 2015 is affirmed.

Issued: August 18, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board