United States Department of Labor
Employees' Compensation Appeals Board

M.Z., Appellant	)	
and	)	**Docket No. 16-0766**
	)	**Issued: August 8, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI, 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 March 7, 2016 appellant filed a timely appeal from an October 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant met his burden of proof to establish that he sustained more than 26 percent permanent left thumb impairment, for which he received a schedule award.

FACTUAL HISTORY

On February 23, 2014 appellant, then a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a worn out left thumb joint after 23 years

[1] 5 U.S.C. § 8101 *et seq.*

of sorting and delivering mail in the performance of duty. He noted that he experienced the same problem in his other hand approximately three or four years earlier.[2] Appellant did not initially stop work.

On August 6, 2014 OWCP accepted the claim for localized primary osteoarthritis in the left hand and thumb, ankylosis of joint, hand on the left, and nontraumatic compartment syndrome of the left upper extremity. Appellant received compensation benefits.[3]

On July 17, 2014 appellant underwent an authorized left trapeziectomy with flexor carpi radialis interposition that was performed by Dr. Kenneth Schaufelberger, a Board-certified orthopedic surgeon.

In a January 15, 2015 report, Dr. Schaufelberger noted that appellant was six months status post left first carpometacarpal (CMC) joint arthroplasty with flexor carpal radialis rotation, interposition, and reconstruction of the deep ligament which was work related. His findings included that appellant had a significant flare-up on Tuesday but his "pain, fortunately, only lasted for a day." Dr. Schaufelberger determined that appellant still had some pain which felt like a "sprain at the base of the thumb. This worsens with resisted thumb flexion such as with a precision pinch." Dr. Schaufelberger noted that appellant had no difficulty with a 30-pound lifting restriction at work. He examined appellant and found that the incision was well healed with normal sagittal and coronal alignments. Dr. Schaufelberger also found that appellant was able to make a composite fist without difficulty, had symmetric grip strength, and was able to bring the tip of his thumb to the 5th metacarpal head. He reviewed x-rays and determined that they demonstrated "overall very good alignment." Dr. Schaufelberger advised that appellant was "doing well status post left thumb CMC joint reconstruction with tendon interposition and deep ligament reconstruction." He recommended a return to work without restrictions. Dr. Schaufelberger explained that regarding permanent partial disability rating, appellant had an arthroplasty of the thumb. He referred to the "Wisconsin guidelines" and opined that an arthroplasty resulted in "at a minimum of 35 percent permanent partial disability rating. I will award him this amount for permanent partial disability rating at the left thumb as compared to amputation."

On February 22, 2015 appellant requested a schedule award (Form CA-7).

By letter dated March 10, 2015, OWCP informed appellant of the type of evidence needed to support his claim for a permanent impairment and requested that he submit such evidence within 30 days. Appellant was advised that his physician should utilize the American

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[2] The record reflects that appellant has a prior claim under No. xxxxxx169, which is accepted for right hand joint pain. That claim was previously on appeal before the Board. Docket No. 14-1108 (issued October 6, 2014). The Board modified OWCP's decision to find that appellant had nine percent permanent impairment of his right upper extremity. Claim number xxxxxx169 is not before the Board on the present appeal.

[3] On January 28, 2015 OWCP found that appellant was capable of working as a modified city carrier 40 hours per week at the employing establishment. It found that his actual earnings met or exceeded the current wages of the job he held when injured and his entitlement to wage loss ended the date he was reemployed with no loss in earning capacity.

Medical Association, *Guides to the Evaluation of Permanent Impairment,* (6th ed. 2009) (*hereinafter,* A.M.A., *Guides*).

In a March 31, 2015 report, Dr. Christopher Westra, a Board-certified internist, noted appellant's history of injury and treatment and advised that he returned to full duty on January 15, 2015. He determined that, based upon the fact that he was six months postsurgery, it was reasonable to conclude that appellant was at maximum medical improvement on March 31, 2015. Dr. Westra utilized the A.M.A., *Guides* and referred to page 394 and found 30 percent impairment of the digit. He explained that it was found under arthropathy of the thumb, carpometacarpal joint class 3. Dr. Westra advised that appellant had residual symptoms, consistent objective findings, and functional loss with relatively normal motion. He indicated that there was no particular preexisting injury or impairment for the left thumb. Dr. Westra determined that motion was evaluated using Table 15-30 on page 468 and appellant was found to be without significant decreased range of motion.

In a July 28, 2015 report, an OWCP medical adviser noted appellant's history of injury and treatment and utilized the A.M.A., *Guides*. He determined that appellant reached maximum medical improvement on January 15, 2015. The medical adviser referred to Table 15-2 and determined that his "CMC arthroplasty was a class 3, grade C diagnosis, with default value of 30 percent."[4] He referred to section 15.3 of page 405 for the grade adjustment calculations and 15-7 for functional history.[5] The medical adviser noted that appellant was able to return to full duty work without difficulty and had some pain that felt like a sprain, which was a grade modifier 1. He referred to Table 15-8[6] and Dr. Schaufelberger's note from January 15, 2015 and determined that appellant had symmetric strength and range of motion, which corresponded to a grade modifier 0. The medical adviser utilized Table 15-9[7] and appellant's clinical studies and x-rays from May 1, 2014, which revealed "CMC" arthritis, and determined that appellant had a grade 1 modifier. He utilized the net adjustment formula "[1-3)+(0-3) + (1-3)]= -7, moving appellant's grade to a grade A."[8] The medical adviser referred to Table 15-2[9] and found the impairment adjusted to 26 percent to the left thumb. He utilized Table 15-12 (page 421), and converted the digital impairment to an upper extremity impairment of nine percent.

On August 13, 2015 OWCP requested that the medical adviser provide a rating for the left thumb only. In an August 28, 2015 report, OWCP's medical adviser restated his rating for left thumb impairment.

By decision dated October 2, 2015, OWCP granted appellant a schedule award for a total of 19.5 weeks of compensation for 26 percent permanent impairment of the left thumb.

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[4] A.M.A., *Guides* 394.

[5] *Id*. at 405, 406.

[6] *Id*. at 408.

[7] *Id*. at 410.

[8] *Id.* at 411.

[9] *Id*. at 394.

LEGAL PRECEDENT

The schedule award provision of FECA,[10] and its implementing federal regulations,[11] 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.[12] For decisions issued after May 1, 2009, the sixth edition will be used.[13]

In addressing upper extremity impairments, the sixth edition requires identifying 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).[14] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[15]

ANALYSIS

Regarding appellant's left thumb, appellant provided a March 31, 2015 report from Dr. Westra, who examined appellant and provided findings. Dr. Westra advised that it was six months postsurgery and appellant was at maximum medical improvement. He utilized the A.M.A., *Guides* and referred to Table 15-2, the digit regional grid for digit impairments determined that appellant had 30 percent impairment to his left thumb. Dr. Westra explained that it was found under arthropathy of the thumb, carpometacarpal joint class 3. The Board notes that Dr. Westra did not indicate how he used grade modifiers and the net adjustment formula in rating impairment.[16] Thus, it was not based or a correct application of the A.M.A., *Guides*,[17] and OWCP properly referred the matter to its medical adviser.[18]

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[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404.

[12] *Id*. at § 10.404(a).

[13] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); and Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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

[15] *Id*. at 521.

[16] *See supra* notes 14, 15.

[17] An opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment. *I.F*., Docket No. 08-2321 (issued May 21, 2009).

[18] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013) (after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*).

The OWCP medical adviser, in reports dated July 28 and August 28, 2015, utilized the findings provided by Dr. Westra. He determined that appellant reached maximum medical improvement on January 15, 2015. The medical adviser referred to Table 15-2, page 394, and determined that appellant's CMC arthroplasty was a class 3, grade C diagnosis, with default value of 30 percent. He then referred to section 15.3 of page 405 for the grade modifiers. The medical adviser assigned a modifier of one for functional history, page 406, as appellant was able to return to full-duty work without difficulty but still had some pain. He assigned a modifier of zero for physical examination, page 408, as Dr. Schaufelberger's note from January 15, 2015 indicated that appellant had symmetric strength and range of motion. The medical adviser assigned a modifier of one for clinical studies, page 410, as x-rays from May 1, 2014, revealed "CMC" arthritis. He utilized the net adjustment formula [1-3) + (0-3) + (1-3)]= -7, moving appellant's grade from the default grade C to grade A which yielded 26 percent impairment of the left thumb.[19] In his July 28, 2015 report, the medical adviser utilized Table 15-12 (page 421), and converted the digital impairment to an upper extremity impairment of nine percent.

On August 13, 2015 OWCP requested that the medical adviser only rate impairment for the thumb and instead of the arm. The medical adviser's August 28, 2015 report restated that appellant had 26 percent thumb impairment and OWCP issued its October 2, 2015 schedule award decision for thumb impairment. However, the Board has held that where the residuals of an injury to a member of the body specified in the schedule[20] extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.[21] Here, OWCP accepted thumb, hand, and arm conditions and neither Dr. Westra nor the OWCP medical adviser provided any indication that the residuals of the accepted conditions did not extend into the arm. Furthermore, appellant will receive more compensation for nine percent impairment of the arm than he will for 26 percent of the thumb.[22] Section 8107(a) of FECA provides 312 weeks of compensation for total loss of an arm and 75 weeks of compensation for total loss of a thumb.[23] For the arm, 312 times nine percent equals 28.08 weeks of compensation. For the thumb, 75 weeks times 26 percent equals 19.5 weeks of compensation. The award to the arm is more favorable and thus the Board will modify OWCP's schedule award decision to find that appellant is entitled to 28.08 weeks of compensation for nine percent impairment of the left arm, less compensation already received.

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[19] The OWCP medical adviser previously provided an almost identical report on July 28, 2015. In that report, he converted the thumb to an upper extremity impairment of nine percent. The August 28, 2015 report did not contain the conversion.

[20] 5 U.S.C. § 8107.

[21] *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983).

[22] *See D.P.*, Docket No. 09-1348 (issued February 19, 2010) (while appellant would not be entitled to receive schedule awards for both the foot and the leg, he should be given the benefit of the more favorable allowance).

[23] 5 U.S.C. § 8107(c)(1), (6).

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 nine percent permanent impairment to the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 8, 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