



## **FACTUAL HISTORY**

On September 28, 2012 appellant, then a 61-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 28, 2012 he sustained injury to his left thumb when he attempted to catch a falling all-purpose container box at work. He stopped work on September 28, 2012 and returned to light-duty work several days later.<sup>3</sup> Appellant's case was administratively handled by OWCP to allow for payment of a limited amount of medical benefits.

Approximately a week after sustaining his September 28, 2012 injury, appellant began to receive treatment from Dr. Sidney H. Levine, a Board-certified orthopedic surgeon. On October 8, 2012 Dr. Levine noted that appellant reported pain in his left thumb, hand, and forearm without numbness.

In a report dated October 21, 2013, Dr. Levine opined that the September 28, 2012 work incident caused the trigger finger condition of appellant's left thumb.<sup>4</sup> On February 17, 2015 OWCP accepted appellant's claim for left trigger finger (acquired) and other tenosynovitis of his left hand and wrist.

On March 4, 2015 Dr. Levine performed tenosynovectomy release surgery (with a median nerve block) on appellant's left thumb. The procedure was authorized by OWCP.

Dr. Levine treated appellant after his left thumb surgery and, on June 16, 2015, he noted that appellant had undergone "an excellent postoperative period" and no longer had any triggering of his left thumb. He reported that, on examination, appellant had full range of motion of his left thumb and hand. Dr. Levine posited that appellant's left thumb condition was permanent and stationary for impairment rating purposes. He indicated that appellant did not require any medical care at that time and opined that he had zero percent permanent impairment under the standards of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

On June 17, 2015 appellant filed a claim for compensation (Form CA-7) claiming a schedule award due to his accepted work injuries.

On July 7, 2015 OWCP requested that Dr. Levine provide an impairment rating under the standards of the sixth edition of the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

In a report dated July 20, 2015, Dr. Levine indicated that, after the March 4, 2015 left thumb surgery, appellant had complete resolution of the trigger condition of his left thumb. He noted that he was utilizing Example 15-1 on page 413 of the sixth edition of the A.M.A., *Guides*, an example involving a patient's stenosing tenosynovitis (trigger digit) that resolved after surgery, and concluded that appellant, like the patient in the example, had no ratable impairment.

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<sup>3</sup> Appellant received continuation of pay for periods of disability. He retired from the employing establishment in August 2013.

<sup>4</sup> The Board notes that the record does not contain any medical records from 2014.

Dr. Levine concluded that appellant had zero impairment of his left thumb under the standards of the sixth edition of the A.M.A., *Guides*.

In a September 3, 2015 decision, OWCP denied appellant's claim for a schedule award. It noted that on July 20, 2015 Dr. Levine found that appellant had zero permanent impairment of his left upper extremity under the sixth edition of the A.M.A., *Guides* and that the medical evidence of record did not support a finding that he had a permanent impairment under FECA.

In a form sent in an envelope postmarked October 23, 2015 and received by OWCP on October 28, 2015, appellant requested that an OWCP hearing representative perform a review of the written record of OWCP's September 3, 2015 decision.

By decision dated November 25, 2015, OWCP denied appellant's request for a review of the written record. It found that his request for a review of the written record was untimely because its decision was issued on September 3, 2015 and his request was postmarked October 23, 2015. OWCP found that appellant was, as a matter of right, not entitled to a review of the written record. It noted that, in its discretion, it had carefully considered appellant's request for a review of the written record and denied it because the issue in the case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered which established that he had a permanent impairment under FECA.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>5</sup> and its implementing regulations<sup>6</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>7</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted appellant's claim for left trigger finger (acquired) and other tenosynovitis of his left hand and wrist. On March 4, 2015 Dr. Levine performed OWCP-

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404 (1999).

<sup>7</sup> *Id.* See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (January 2010); and Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (January 2010).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

authorized tenosynovectomy release surgery (with a median nerve block) on appellant's left thumb. On June 17, 2015 appellant filed a Form CA-7 claiming a schedule award due to his accepted work injuries.

The Board finds that OWCP properly denied appellant's claim for a schedule award. In support of his claim, appellant submitted a July 20, 2015 report of Dr. Levine, but this report does not support a finding of permanent impairment. Dr. Levine indicated that, after the March 4, 2015 left thumb surgery, appellant had complete resolution of his trigger finger condition.<sup>9</sup> He described an example in the sixth edition of the A.M.A., *Guides* which involved a patient's stenosing tenosynovitis (trigger digit) that resolved after surgery, and concluded that appellant, like the patient in the example, had no ratable impairment.<sup>10</sup> Dr. Levine opined that appellant had zero impairment of his left thumb under the standards of the sixth edition of the A.M.A., *Guides*.

Appellant failed to submit any medical evidence showing that he had a permanent impairment under FECA and has not met his burden of proof to establish a schedule award claim. He may request a 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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that "a claimant ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>11</sup> Section 10.615 of OWCP's federal regulations implementing this section of FECA, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>12</sup> Thus, a claimant has a choice of requesting an oral hearing or a review of the written record pursuant to section 8124(b)(1) of FECA and its implementing regulation. OWCP's regulations and Board precedent provide that the request for an oral hearing or review of the written record must be sent within 30 days of the date of issuance of the decision (as determined by the postmark or other carrier's date marking) of the date of the decision for which an oral hearing or review of the written record is sought.<sup>13</sup>

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<sup>9</sup> In a June 16, 2015 report, Dr. Levine had indicated that appellant's left thumb condition was permanent and stationary for impairment rating purposes.

<sup>10</sup> A.M.A., *Guides* 413, Example 15-1.

<sup>11</sup> 5 U.S.C. § 8124(b)(1).

<sup>12</sup> 20 C.F.R. § 10.615.

<sup>13</sup> *Id.* at § 10.616(a). A request for review of the written record is subject to the same requirement as an oral hearing request that the request be sent within 30 days of OWCP's final decision. See *J.P.*, Docket No. 15-790 (issued June 3, 2015).

## ANALYSIS -- ISSUE 2

The Board further finds that OWCP properly denied appellant's request for a review of the written record. In this case, appellant's form requesting that an OWCP hearing representative perform a review of the written record of OWCP's September 3, 2015 decision was sent in an envelope postmarked October 23, 2015. Therefore, OWCP properly found that appellant's request was untimely filed and that he was not entitled to a review of the written record as a matter of right.<sup>14</sup> It then properly exercised its discretion and noted that it had carefully considered appellant's request for a review of the written record and denied it because the issue in the case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered which established that he had permanent impairment under FECA.

## CONCLUSION

The Board finds that appellant has not established a claim for a schedule award. The Board further finds that OWCP properly denied appellant request for a review of the written record.

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<sup>14</sup> As noted above, a request for review of the written record is subject to the same requirement as an oral hearing request that the request be sent within 30 days of OWCP's final decision. *See supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 25 and September 3, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 24, 2016  
Washington, DC

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

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

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