

ISSUES

The issues are: (1) whether OWCP properly found two percent permanent impairment of the right hand, for which he received a schedule award; and (2) whether OWCP applied the appropriate cost-of-living increase in calculating the January 8, 2015 schedule award.

FACTUAL HISTORY

OWCP accepted that on March 31, 2011 appellant, then a 42-year-old special agent, sustained metacarpal neck fractures of the right small and ring fingers while delivering hand strikes to a boxing bag during physical training in the performance of duty. He stopped work on April 4, 2011. Appellant did not receive wage-loss compensation related to the accepted right small and ring finger fractures.³

Dr. Hervey L. Kimball, a Board-certified orthopedic surgeon, obtained April 7, 2011 x-rays demonstrating “a fracture at the junction of the fifth metacarpal distal diaphysis and fifth metacarpal head with apex dorsal angulation.” On April 18, 2011 he performed an open reduction and internal fixation of the right small finger metacarpal neck fracture. Dr. Kimball removed the pins on May 16, 2011 and released appellant to light duty.⁴ August 30, 2011 x-rays confirmed a stable union. Appellant returned to full duty on September 1, 2011.

On August 25, 2012 appellant claimed a schedule award.⁵ In support of his claim, he submitted a November 26, 2012 impairment rating from Dr. Kimball, noting that appellant had reached maximum medical improvement. On examination, appellant found mild residual stiffness, with a 15-degree proximal interphalangeal joint extensor lag in the fourth finger, and a 5-degree lag in the fifth finger. Referring generally to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), Dr. Kimball found four percent permanent impairment of the right hand.

In a June 24, 2014 letter, OWCP advised appellant of the evidence needed to establish his claim, including his physician’s impairment rating of the accepted injury, utilizing the sixth edition of the A.M.A., *Guides*.

In response, appellant provided a July 18, 2014 impairment rating from Dr. Andrew J. Rogers, an attending Board-certified orthopedic surgeon. Dr. Rogers noted that appellant underwent right shoulder surgery in 2012 with repair of a superior labral tear from anterior to posterior lesion, debridement, and resection of calcium in the rotator cuff. Appellant also

³ Appellant had filed prior claims which were accepted in OWCP File No. xxxxxx822, for a left shoulder hematoma and partial left rotator cuff tear sustained on November 1, 1995, OWCP File No. xxxxxx841, for an April 30, 2001 injury accepted for cervical sprain, cervical radiculopathy, and permanent aggravation of degenerative cervical spondylosis, OWCP File No. xxxxxx376, for a right rotator cuff sprain and right shoulder tendinitis sustained on March 7, 2006, and OWCP File No. xxxxxx700 for a left shoulder condition sustained on June 27, 1997.

⁴ Appellant participated in physical therapy from July to September 2011.

⁵ On April 14, 2014 appellant telephoned OWCP and requested that OWCP reimburse his providers for right shoulder surgery. He requested that OWCP combine the present claim with three of his other claims in considering his schedule award.

underwent left shoulder surgery in 1996. On examination, Dr. Rogers found a slight proximal interphalangeal extensor lag in the right fourth and fifth fingers, slightly decreased sensation in the radial nerve, slight discomfort with range of motion, a loss of 15 to 20 degrees forward flexion of the right shoulder, loss of 10 degrees abduction, 10-degree loss of external rotation, and loss of 25 degrees of internal rotation, and a positive impingement sign. He also noted limited motion of the left shoulder. Dr. Rogers opined that appellant reached maximum medical improvement regarding the right hand and found that, according to Table 15-11 of the A.M.A., *Guides*,⁶ appellant had three percent whole person impairment.

On September 19, 2014 an OWCP medical adviser reviewed the medical record and a statement of accepted facts. He concurred that appellant had attained maximum medical improvement as of July 18, 2014 regarding the accepted metacarpal neck fractures of the right small and ring fingers. The medical adviser noted that as Dr. Rogers had not provided specific calculations, his impairment rating could not be utilized. He opined that appellant had two percent impairment of the right hand using the diagnosis-based method under Table 15-2.⁷ Regarding the fourth finger, the medical adviser found, based on the metacarpal neck fracture a Class of Diagnosis (CDX) 1, (diagnosis-based impairment), a grade 1 modifier for Functional History (GMFH) as appellant did not require functional modifications in daily living, and a grade 1 modifier for findings on Physical Examination (GMPE) due to slight discomfort with range of motion. The medical adviser noted that there was no applicable grade modifier for Clinical Studies (GMCS) as imaging studies were used to determine the diagnostic class. Applying the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1-1) + (1-1), he found a net adjustment of zero, leaving the CDX at the default grade C, equaling eight percent impairment of the right fourth digit. The medical adviser applied the identical tables and grading schemes to the small finger metacarpal neck fracture, also calculating eight percent impairment of the right fifth finger. He utilized Table 15-12⁸ to convert the eight percent fourth finger impairment to one percent impairment of the right hand, and the eight percent fifth finger impairment to one percent impairment of the right hand. The medical adviser therefore found a two percent permanent impairment of the right hand.

On November 12, 2014 Dr. Rogers reviewed OWCP medical adviser's September 19, 2014 report and concurred with his calculation of two percent permanent impairment of the right hand.

By decision dated January 8, 2015, OWCP issued a schedule award for two percent permanent impairment of the right hand caused by the accepted metacarpal neck fractures of the right small and ring fingers. The period of the award ran from July 18 to August 21, 2014, a period of 4.88 weeks. As appellant had a spouse he was entitled to the augmented 75 percent compensation rate for claimants with eligible dependents. OWCP calculated that 75 percent of his weekly pay rate of \$2,508.58 as of April 4, 2011, the date disability began, was \$1,881.44. It

⁶ Table 15-11, page 420 of the sixth edition of the A.M.A., *Guides* is entitled "Impairment Values Calculated from Upper Extremity Impairment."

⁷ Table 15-2, page 393 of the sixth edition of the A.M.A., *Guides* is entitled "Digit Regional Grid: Digit Impairments, Fractures."

⁸ Table 15-12, page 421 of the sixth edition of the A.M.A., *Guides* is entitled "Impairment Values Calculated from Digit Impairment."

noted that it added the applicable March 1, 2012 cost-of-living adjustment of 3.2 percent, increasing appellant's schedule award payments to \$1,886.69 a week. OWCP did not provide the mathematical calculations used to determine the amount of the increase attributable to the CPI.

Appellant disagreed and requested a hearing, held August 11, 2015. At the hearing, appellant's representative noted that OWCP applied the March 1, 2012 cost-of-living increase to schedule award compensation issued at the April 4, 2011 pay rate, increasing his monthly payments from \$1,881.44 to \$1,886.69, a difference of \$5.25. He contended, however, that appellant was entitled additionally to all cost-of-living adjustments issued from April 4, 2011 through the end of the schedule award on August 21, 2014, as follows: 3.2 percent from March 1, 2012 through February 2013; 1.7 percent from March 1, 2013 through February 2014; 1.5 percent from March 1 through August 21, 2014. The representative asserted that each of these adjustments should have been added to appellant's schedule award payments.

Following the hearing, appellant provided a July 28, 2015 impairment rating from Dr. Samy Bishai, an orthopedic surgeon. Dr. Bishai reviewed medical records and opined that appellant had attained maximum medical improvement regarding the accepted metacarpal neck fractures of the right small and ring fingers. On right hand examination, he found a deformity of the fourth and fifth fingers visible when appellant closed his fist, revealing "depression of the metacarpal heads of both the right fourth and fifth fingers." Dr. Bishai noted weakness of the right hand compared to the left, and related appellant's complaints of pain with use of the hand. He found no indication on examination that appellant's cervical spine or right shoulder injuries affected the right hand. Referring to Table 15-2 of the A.M.A., *Guides*, Dr. Bishai found, for a diagnosis of metacarpal neck fractures of the right ring and little fingers, a CDX of 1, and grade modifiers of 2 for physical findings and functional history. Applying the net adjustment formula, he calculated a net modifier of 2, raising the default CDX from C to E. This equaled 10 percent impairment for each digit. Dr. Bishai found that this equaled two percent right hand impairment.⁹

By decision dated and finalized October 6, 2015, an OWCP hearing representative affirmed the January 8, 2015 schedule award, finding two percent permanent impairment of the right hand. The hearing representative noted that Dr. Rogers and Dr. Bishai both found that appellant had two percent impairment of the right hand. While Dr. Kimball found a greater percentage of impairment, he did not refer to the specific tables and grading schemes on which he based the rating. The hearing representative further found that appellant had received the appropriate CPI adjustment and was not entitled to additional CPI increases. The schedule award was based on a weekly pay rate of \$1881.44 a week, equaling 75 percent of \$2,508.88, his weekly pay rate of April 4, 2011, the date disability began for the right hand injury. OWCP then applied the current CPI adjustment, increasing the \$1,881.44 amount to \$1,886.69. The hearing representative found that appellant's representative failed to provide any evidence establishing that appellant would be eligible for additional applicable CPI adjustments.¹⁰

⁹ Although he provided an impairment rating for the left and right shoulder and cervical radiculopathy the only rating before the Board is the right hand impairment rating.

¹⁰ The hearing representative advised that if appellant was claiming a schedule award for the shoulder or cervical issue it would have to be filed under those respective claim numbers.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA¹¹ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.¹² For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.¹³

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).¹⁴ In addressing upper extremity impairments under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.¹⁵ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁶ The sixth edition of the A.M.A., *Guides* also provides that, under certain circumstances, range of motion may be selected as an alternative approach in rating impairment. An impairment rating that is calculated using range of motion may not be combined with a diagnosis-based impairment and stands alone as a rating.¹⁷

Section 8107(c)(17) of FECA¹⁸ and OWCP's procedures¹⁹ provide that in general, loss of less than one digit should be computed in terms of impairment to the digit itself, while loss of two or more digits should be computed in terms of impairment to the whole hand.

¹¹ 5 U.S.C. § 8107.

¹² *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹⁴ A.M.A., *Guides* (6th ed. 2008), page 3, Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹⁵ *Id.* at (6th ed. 2008), pp. 494-531.

¹⁶ A.M.A., *Guides* 411.

¹⁷ *Id.* at 390. The A.M.A., *Guides* explains that diagnoses in the grid that may be rated using range of motion are followed by an asterisk.

¹⁸ 5 U.S.C. § 8107(c)(17).

¹⁹ *Supra* note 11 at Chapter 2.808.5(e) (February 2013). *See Charles B. Carey*, 49 ECAB 528 (1998) (where the Board remanded the case for OWCP to consider whether an accepted finger impairment also impaired the right hand).

It is well established that, when the examining physician does not provide an estimate of impairment conforming to the A.M.A., *Guides*, OWCP may rely on the impairment rating provided by a medical adviser.²⁰

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained metacarpal neck fractures of the right small and ring fingers. On August 25, 2012 appellant claimed a schedule award. In support of his claim, he provided a November 26, 2012 report from Dr. Kimball, an attending Board-certified orthopedic surgeon, who opined that appellant had four percent impairment of the right hand due to the accepted metacarpal neck fractures of the right small and ring fingers according to unspecified elements of the A.M.A., *Guides*. As Dr. Kimball did not explain the basis for his rating, OWCP could not utilize his report.²¹

Appellant also submitted July 18 and November 12, 2014 impairment ratings from Dr. Rogers, an attending Board-certified orthopedic surgeon, who found that appellant had reached maximum medical improvement. Dr. Rogers found that, according to the diagnosis-based rating method under Table 15-11, the accepted right small and ring finger fractures equaled a two percent permanent impairment of the right hand. An OWCP medical adviser reviewed Dr. Rogers' clinical findings and the medical record, and agreed that appellant had two percent permanent impairment of the right hand using the diagnosis-based rating method. Regarding the fractures of fourth and fifth fingers, he found a class 1 CDX, a grade 1 GMFH as appellant could perform all activities of daily living, and a grade 1 GMPE due to slight discomfort with range of motion. The medical adviser explained that a GMCS was not appropriate as imaging studies were used to determine the CDX. Applying the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1-1) + (1-1), he found a net adjustment of zero, leaving the CDX at the default grade C, equaling an eight percent impairment of the right fourth and fifth digits. The medical adviser used Table 15-12²² to convert the eight percent impairment of the fourth finger to one percent right hand impairment, and the eight percent impairment of the fifth finger impairment to one percent right hand impairment. OWCP therefore issued the January 8, 2015 schedule award for two percent impairment of the right hand.

Appellant disagreed, and pursuant to an August 11, 2015 hearing, provided an impairment rating from Dr. Bishai, an attending orthopedic surgeon. Based on a thorough examination and records review, Dr. Bishai also found two percent impairment of the right hand due to the accepted right small and ring finger fractures. As appellant submitted no probative evidence indicating that he sustained any additional impairment to the right hand, OWCP issued its October 6, 2015 decision affirming the January 8, 2015 schedule award.

The Board finds that OWCP properly relied on Dr. Rogers' clinical findings, as interpreted by the medical adviser, in determining that the accepted fractures constituted two

²⁰ *J.Q.*, 59 ECAB 366 (2008).

²¹ *D.N.*, 59 ECAB 576 (2008).

²² *Supra* note 8.

percent permanent impairment of the right hand. The medical adviser applied the appropriate tables and grading schemes to Dr. Rogers' findings on examination, and provided a clear explanation of each element in the rating. His opinion is entitled to the weight of the medical evidence in this case.²³

On appeal, appellant's representative contends that OWCP should have relied on the impairment rating provided by Dr. Bishai. As set forth above, Dr. Bishai also opined that appellant had two percent impairment of the right hand, concurring with the impairment figure provided by Dr. Rogers and the medical adviser.

Appellant may request a schedule award or increased schedule award regarding the right upper extremity, 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

When an injury that does not result in disability causes permanent impairment, the beneficiary is eligible for cost-of-living adjustments under section 8146(a) of FECA, where the award for such impairment began more than one year prior to the date the cost-of-living adjustment took effect.²⁴ When there is prior injury-related disability, OWCP's procedures provide that the cost-of-living adjustment increase start date for the schedule award is the effective date of the applicable pay rate.²⁵

ANALYSIS -- ISSUE 2

In calculating the January 8, 2015 schedule award, OWCP properly utilized April 4, 2011 as the start date, the date that disability began for the hand injury. As of April 4, 2011, appellant's pay rate was \$2,508.58 a week. OWCP properly applied the 75 percent rate as appellant had eligible dependents. It calculated that 75 percent of \$2,508.58 was \$1,881.44. OWCP applied the March 1, 2012 CPI of 3.2 percent to appellant's compensation as of April 4, 2011, increasing the weekly compensation date to \$1,888.69.

The Board notes that April 4, 2011, the date that disability began is less than one year prior to March 31, 2012, the date of the CPI OWCP apparently applied to the schedule award. This does not meet the requirement under section 8146(a) of FECA²⁶ that the impairment begin more than one year prior to the effective date of the CPI. Also, OWCP did not provide the mathematical calculations used to determine the amount of the increase attributable to the CPI. The Board finds the issue requires clarification.

The case will be remanded to OWCP to clarify which CPI it applied to the January 8, 2015 schedule award. Also, it shall set forth the mathematical calculations used to determine the

²³ *Supra* note 20.

²⁴ 5 U.S.C. § 8146(a); 20 C.F.R. § 10.420(b).

²⁵ *Supra* note 13 at Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900, Exhibit 1 (January 2010).

²⁶ 5 U.S.C. § 8146(a).

amount of the increase in appellant's monthly payments. Following this and any other development deemed necessary, OWCP shall issue an appropriate decision in the case.

On appeal, appellant's representative asserts that appellant was entitled to cost-of-living increases from 2012 to 2014. As set forth above, the case will be remanded for clarification of the CPI issue.

CONCLUSION

The Board finds that OWCP properly found that appellant sustained two percent permanent impairment of the right hand, for which he received a schedule award. The Board further finds that the case is not in posture for a decision regarding whether OWCP applied the appropriate cost-of-living increase in calculating the January 8, 2015 schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 6, 2015 is affirmed in part regarding the percentage of permanent impairment, and set aside and remanded in part regarding whether OWCP applied the appropriate cost-of-living increase to appellant's schedule award.

Issued: October 7, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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