DECISION AND ORDER

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

JURISDICTION

On May 2, 2016 appellant, through counsel, filed a timely appeal from a March 30, 2016 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act\(^2\) (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

\(^1\) In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. \(Id\). An attorney or representative’s collection of a fee without the Board’s approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. \(Id\); see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

\(^2\) 5 U.S.C. § 8101 \textit{et seq.}
The issue is whether appellant met her burden of proof to establish that she has more than five percent permanent impairment of her right thumb, for which she received a schedule award.

**FACTUAL HISTORY**

On July 22, 2011 appellant, then a 49-year-old nurse, filed a traumatic injury claim (Form CA-1) claiming that on July 18, 2011 she sustained injury when she hit her right thumb on a medical cart tray. OWCP initially accepted that appellant sustained a sprain of hand (right thumb) and it later expanded her claim to include acceptance of ulnar collateral ligament rupture of her right thumb.3

On July 21, 2011 Dr. Alexander Blevins, an attending Board-certified orthopedic surgeon, performed an ulnar collateral ligament repair of the metacarpophalangeal joint of appellant’s right thumb. The surgery was authorized by OWCP.

In a June 12, 2012 report, Dr. Blevins noted that appellant reported her right thumb condition was “still the same” and that she was unable to bring her thumb all the way up to her palm. He indicated that she had five percent permanent impairment of her right thumb under Table 15-2 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).

On November 20, 2014 appellant filed a claim for compensation (Form CA-7) claiming a schedule award due to her accepted work injury.

Due to a lack of a recent impairment evaluation, OWCP referred appellant in March 2014 for an examination and impairment evaluation to Dr. Joseph McGowin, III, a Board-certified orthopedic surgeon.

In an April 15, 2015 report, Dr. McGowin described appellant’s factual and medical history and detailed the findings of his physical examination on that date. He noted that she reported pain in the metacarpophalangeal joint of her right thumb. Dr. McGowin recorded right thumb range of motion findings and noted that neurovascular examination of both hands was unremarkable. He diagnosed right thumb sprain, ulnar collateral ligament rupture, and surgical repair with objective findings of laxity and limited range of motion and subjective complaints of pain along the ulnar border of the metacarpophalangeal joint of the right thumb. Appellant had 15 degrees of laxity of the right metacarpophalangeal joint upon extension and 10 degrees of laxity of the right metacarpophalangeal joint upon flexion. Dr. McGowin noted, “Impairment Rating from Table 15-2, page 392, is a class 1 impairment with a [grade modifier for functional history] equal to 1, a [grade modifier for physical examination] equal to 2, and [grade modifier for clinical studies] equal to 0. This results in an adjustment of 0 and a default impairment of five percent of the digit.”

3 After her injury, appellant began working in a light-duty position for the employing establishment. She returned to full duty in April 2012.
In a supplemental report dated April 28, 2015, Dr. McGowin noted, “Utilizing Table 15-2 as provided in your notice, the five percent impairment rating of the thumb noted on the April 15, 2015 [second opinion evaluation] would translate to a two percent impairment of the hand or a two percent impairment of the upper extremity.”

On May 1, 2015 an OWCP medical adviser indicated that he had reviewed the medical evidence of record, including the reports of Dr. McGowin. He noted that, under Table 15-2 on page 392 of the sixth edition of the A.M.A., *Guides*, appellant’s right thumb condition fell under the diagnosis category of thumb metacarpophalangeal sprain with 10 to 20 degrees of laxity. The medical adviser indicated that appellant fell under the class 1, grade C default value of five percent and noted that he agreed with Dr. McGowin’s assessment that she had a total right thumb impairment of five percent.

In a May 1, 2015 report, another OWCP medical adviser indicated that appellant’s right thumb was the only area affected by the July 18, 2011 work injury.

In a May 7, 2015 decision, OWCP granted appellant a schedule award for five percent permanent impairment of her right thumb. The award ran for 3.75 weeks from June 12 to July 8, 2012 and was based on the impairment rating of OWCP’s medical adviser who evaluated the medical findings of record, including those of Dr. McGowin.

Appellant, through counsel, requested a telephone hearing with an OWCP hearing representative. During the hearing held on January 12, 2016, counsel argued that appellant should have been given an impairment rating for her right hand or upper extremity.

By decision dated March 30, 2016, OWCP’s hearing representative affirmed OWCP’s May 7, 2015 decision noting that appellant had not shown that she has more than five percent permanent impairment of her right thumb, for which she received a schedule award. She determined that the evidence of record did not show that appellant had permanent impairment that extended beyond her right thumb into other parts of her right hand or right upper extremity.

**LEGAL PRECEDENT**

The schedule award provision of FECA ⁴ and its implementing regulations ⁵ 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.⁶

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In determining impairment for the upper extremity under the sixth edition of the A.M.A.,
Guides, an evaluator must establish the appropriate diagnosis for each part of the upper extremity

to be rated. With respect to the right thumb, the relevant portion of the right upper extremity for
the present case, reference is made to Table 15-2 (Digit Regional Grid) beginning on page 391.\(^7\)

After the Class of Diagnosis (CDX) is determined from the Digit Regional Grid (including
identification of a default grade value), the net adjustment formula is applied using the grade
modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and
grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH-CDX) +
(GMPE-CDX) + (GMCS-CDX).\(^8\)

OWCP procedures provide that where the residuals of an injury to a member of the body
specified in the schedule award provisions of FECA extend into an adjoining area of a member
also enumerated in the schedule, such as an injury of the finger into the hand, or of the hand into
the arm, the schedule award should be made on the basis of the percentage loss of use of the
larger member.\(^9\) OWCP procedures also advise that in general, loss of one digit should be
computed in terms of impairment to the digit itself, unless there is impairment extending to an
adjoining member.\(^10\)

**ANALYSIS**

OWCP found that on July 18, 2011 appellant sustained a sprain of the hand (right thumb)
and ulnar collateral ligament rupture of her right thumb. On July 21, 2011 she underwent
OWCP-authorized ulnar collateral ligament repair of the metacarpophalangeal joint of her right
thumb. Appellant claimed entitlement to schedule award compensation and on May 7, 2015
OWCP granted her a schedule award for five percent permanent impairment of her right thumb.
The award was based on the May 2015 impairment rating of OWCP’s medical adviser who

The Board finds that appellant did not meet her burden of proof to establish that she has
more than five percent impairment of her right thumb, for which she received a schedule award.

The Board finds that the May 1, 2015 evaluation of OWCP’s medical adviser shows,
which includes the clinical findings of Dr. McGowin, that appellant does not have more than five
percent impairment of her right thumb. The medical adviser properly noted that, under Table 15-2
on page 392 of the sixth edition of the A.M.A., Guides, appellant’s right thumb condition fell
under the diagnosis category of thumb metacarpophalangeal sprain with 10 to 20 degrees of
laxity.\(^11\) He indicated that appellant fell under the class 1, grade C default value of five percent

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\(^8\) Id. at 405-11.

\(^9\) Federal (FECA) Procedure Manual, Part 2 -- Claims, Schedule Awards and Permanent Disability Claims,
Chapter 2.808.5e (February 2013); see Tonya D. Bell, 43 ECAB 845, 849 (1992).

\(^10\) See id.

on Table 15-2 and correctly noted that application of the net adjustment formula to the grade modifiers (grade modifier for functional history of 1, grade modifier for physical examination of 2, and grade modifier for clinical studies of 0) meant that appellant did not move from the default value of five percent.\textsuperscript{12} Therefore, appellant has a total right thumb impairment of five percent. The record does not contain a rationalized impairment rating showing that appellant has more than five percent permanent impairment of her right thumb.

On appeal counsel argues that appellant’s impairment rating extends beyond her right thumb into her right upper extremity and that she has two percent permanent impairment of her right upper extremity. As noted above, when residuals of an injury to a member of the body specified in the schedule award provisions of FECA extend into an adjoining area of a member also enumerated in the schedule, the schedule award should be made on the basis of the percentage of loss of use of the larger member.\textsuperscript{13} In the present case, the evidence demonstrates that appellant sustained five percent permanent impairment of her right thumb. There is no evidence that residuals of appellant’s work injury extended into an adjoining area of the affected member.\textsuperscript{14} Therefore, there is no basis for converting the schedule award to an award for the right hand or right upper extremity. For these reasons, appellant has not shown that she has more than five percent impairment of her right thumb.

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.

\textbf{CONCLUSION}

The Board finds that appellant did not meet her burden of proof to establish that she has more than five percent permanent impairment of her right thumb, for which she received a schedule award.

\textsuperscript{12} See supra note 7.

\textsuperscript{13} See supra note 8.

\textsuperscript{14} In a report dated April 28, 2015, Dr. McGowin noted, “Utilizing Table 15-2 as provided in your notice, the five percent impairment rating of the thumb noted on the April 15, 2015 [second opinion evaluation] would translate to a two percent impairment of the hand or two percent impairment of the upper extremity.” However, Dr. McGowin did not provide any explanation of how appellant’s right thumb impairment extended into her right hand or right upper extremity.
ORDER

IT IS HEREBY ORDERED THAT the March 30, 2016 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: September 19, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy 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