

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

R.Y., Appellant)	
)	
and)	Docket No. 17-0045
)	Issued: April 7, 2017
DEPARTMENT OF THE NAVY, JOINT)	
REGION MARIANAS, Yigo, Guam, Employer)	

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 14, 2016 appellant filed a timely appeal from a September 22, 2016 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 over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish more than six percent permanent impairment of his left ring finger, for which he previously received a schedule award.

FACTUAL HISTORY

On February 22, 2015 appellant, then a 56-year-old operations and maintenance supervisor, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left ring finger injury in the performance of duty on August 25, 2014. He indicated that he had been working on the Air Force

¹ 5 U.S.C. § 8101 *et seq.*

base's golf course in a drainage ditch trying to clear a grate when he slipped and caught his left ring finger in the drainage grate.

On June 17, 2015 OWCP accepted acquired trigger finger of the left 4th digit (ring finger).

On July 28, 2015 appellant underwent OWCP-approved surgery on his left ring finger, a tenovagotomy procedure to ameliorate the condition of recurrent, severe A1 pulley stenosing tenosynovitis. The procedure was performed by Dr. Jerone T. Landstrom, Board-certified in hand surgery and general surgery.

On August 24, 2015 appellant filed a claim for a schedule award (Form CA-7).

In a September 18, 2015 report, Dr. Landstrom found that appellant's left ring finger tenosynovitis had resolved and that he had attained maximum medical improvement (MMI).

On March 4, 2016 appellant underwent a functional capacity evaluation (FCE), which included, among other things, range of motion (ROM) measurements for the various finger and thumb joints on both hands.

In an April 18, 2016 report, Dr. Landstrom found 10 percent permanent impairment of the left ring finger digit using the ROM method of impairment rating under the "most recent edition" of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

On June 19, 2016 OWCP's district medical adviser (DMA), Dr. Morley Slutsky, Board-certified in occupational medicine, reviewed the claim, and found that appellant had six percent permanent impairment of the left ring finger using the diagnosis-based impairment (DBI) method under Table 15-2, Digit Regional Grid, A.M.A., *Guides* 392 (6th ed. 2008). The DMA based his impairment rating on a diagnosis of "finger sprain." He took issue with Dr. Landstrom's left ring finger rating using the ROM method, and relied on the "preferred" DBI methodology.

By decision dated September 22, 2016, OWCP granted appellant a schedule award for six percent permanent impairment for the left ring finger. The award covered a period of 1.5 weeks, from September 18 through 28, 2015. OWCP based the award on the DMA's June 19, 2016 impairment rating.

LEGAL PRECEDENT

Section 8149 of FECA delegates to the Secretary of Labor the authority to prescribe rules and regulations for the administration and enforcement of FECA. The Secretary of Labor has vested the authority to implement the FECA program with the Director of OWCP.³ Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of

² Although Dr. Landstrom mentioned that he relied on the "most recent edition" of the A.M.A., *Guides*, the included upper extremity evaluation record referenced Table(s) and/or Figure(s) from a prior edition of the A.M.A., *Guides*.

³ See 20 C.F.R. §§ 1.1-1.4.

use of specified members, functions, and organs of the body.⁴ FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁵

The sixth edition of the A.M.A., *Guides* was first printed in 2008. Within months of the initial printing, the A.M.A. issued a 52-page document entitled “Clarifications and Corrections, Sixth Edition, *Guides to the Evaluation of Permanent Impairment.*” The document included various changes to the original text, intended to serve as an *erratum*/supplement to the first printing of the A.M.A., *Guides*. In April 2009, these changes were formally incorporated into the second printing of the sixth edition.

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁶ The Board has approved OWCP’s use of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁷

ANALYSIS

The issue on appeal is whether appellant met his burden of proof to establish that he has greater than six percent impairment of the left ring finger. The Board finds that this case is not in posture for decision.

The Board has found that OWCP has inconsistently applied Chapter 15 of the sixth edition of the A.M.A., *Guides* when granting schedule awards for upper extremity claims. No consistent interpretation has been followed regarding the proper use of the DBI or the ROM methodology when assessing the extent of permanent impairment for schedule award purposes.⁸ The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.⁹ In *T.H.*, the Board concluded that OWCP physicians are at odds over the proper methodology for rating upper extremity impairment, having observed attending physicians, evaluating physicians, second opinion physicians, impartial medical examiners, and district medical advisers use both DBI and ROM methodologies interchangeably without any consistent basis. Furthermore, the Board has observed that physicians interchangeably cite to language in the first printing or the second printing when justifying use of

⁴ For a complete loss of use of the ring finger (3rd finger), an employee shall receive 25 weeks’ compensation. 5 U.S.C. § 8107(c)(10).

⁵ 20 C.F.R. § 10.404; *see also* Ronald R. Kraynak, 53 ECAB 130 (2001).

⁶ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁷ *Isidoro Rivera*, 12 ECAB 348 (1961).

⁸ *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

⁹ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

either ROM or DBI methodology. Because OWCP's own physicians are inconsistent in the application of the A.M.A., *Guides*, the Board finds that OWCP can no longer ensure consistent results and equal justice under the law for all claimants.¹⁰

In light of the conflicting interpretation by OWCP of the sixth edition with respect to upper extremity impairment ratings, it is incumbent upon OWCP, through its implementing regulations and/or internal procedures, to establish a consistent method for rating upper extremity impairment. In order to ensure consistent results and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the September 22, 2016 decision. Following OWCP's development of a consistent method for calculating permanent impairment for upper extremities to be applied uniformly, and such other development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for an upper extremity schedule award.

CONCLUSION

The Board finds this case not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: April 7, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ *Supra* note 8.