

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

M.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
TENNESSEE VALLEY HEALTHCARE)
SYSTEM, Nashville, TN, Employer)

Docket No. 16-1785
Issued: November 9, 2017

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 September 7, 2016 appellant filed a timely appeal from a September 1, 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 established more than eight percent permanent impairment of the right middle finger, for which he previously received a schedule award.

FACTUAL HISTORY

On November 24, 2015 appellant, then a 30-year-old general engineer, filed a traumatic injury claim (Form CA-1) alleging a partial amputation of the right middle finger, which

¹ 5 U.S.C. § 8101 *et seq.*

occurred on November 17, 2015 when a door at work slammed shut on his finger. He was treated in the employing establishment's emergency department and released later that same day.² Appellant stopped work on November 18, 2015 and returned to work November 23, 2015. On December 22, 2015 OWCP accepted the claim for traumatic right middle finger amputation.

On January 27, 2016 appellant filed a claim for a schedule award (Form CA-7).

Appellant was unable to obtain an impairment rating from his own physician(s), therefore, OWCP referred him to Dr. David A. West, an orthopedic surgeon. In an April 13, 2016 report, Dr. West diagnosed traumatic amputation of the distal phalanx, right long finger. He noted that the amputation was appropriate at the distal phalanx with nice contour. Dr. West also reported that appellant had full range of motion to all digits of the right hand, including the long finger. He estimated that appellant reached maximum medical improvement (MMI) on approximately January 1, 2016. Based on his evaluation, Dr. West found that appellant had eight percent permanent impairment of the right upper extremity under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (A.M.A., *Guides*). Referencing Table 15-28, Impairment of Upper Limb Amputation at Various Levels, A.M.A., *Guides* 457, he noted that an amputation at the distal phalangeal (DIP) joint (index or middle finger) yielded 45 percent permanent impairment of the digit, or 9 percent impairment of the hand, 8 percent impairment of the upper extremity, or 5 percent whole person impairment. Dr. West found that there were no applicable adjustment modifiers, and thus, concluded that appellant had eight percent permanent impairment of the "right upper extremity" due to his accepted work injury.

In an April 26, 2016 report, Dr. Morley Slutsky, a Board-certified occupational medicine specialist and OWCP medical adviser, questioned the accuracy of Dr. West's impairment rating. He noted that it appeared from the record that a majority of appellant's distal phalanx was still present, and therefore, he questioned why Dr. West rated appellant as if the whole distal phalanx had been amputated. Dr. Slutsky indicated that in order to provide an accurate rating, Dr. West should quantify the amount of distal phalanx amputation, citing Figure 15-5, Digit Impairment due to Finger Amputation at Various Lengths, A.M.A., *Guides* 426 (6th ed. 2009).

OWCP referred the case back to Dr. West, and in a May 3, 2016 supplemental report he indicated that there was no discrepancy with his eight percent impairment rating for the third phalanx. Dr. West explained that according to Figure 15-5, eight percent did indeed only involve the tip of the digit. He further noted that a complete amputation of the DIP would represent 40 percent impairment of the digit, which he had not mentioned anywhere in his report, but after reviewing Table 15-12, Impairment Values Calculated From Digit Impairment, A.M.A., *Guides* 421(6th ed. 2009), Dr. West indicated that he would amend the calculated five percent whole person impairment. He explained that under Table 15-12, eight percent "digital (sic) impairment" of the index or middle finger would convert to two percent permanent impairment of the hand, and one percent upper extremity or whole person impairment. Accordingly, Dr. West amended his prior report to reflect that appellant had an "[eight percent] digital (sic) impairment and a [one percent] upper extremity impairment."

² A November 17, 2015 right hand x-ray revealed acute traumatic amputation of the distal end of the third digit, which included amputation of the very distal portion of the terminal tuft of the distal phalanx.

In an August 4, 2016 report, Dr. Slutsky, OWCP's medical adviser, indicated that the final right middle finger digit impairment was eight percent, consistent with Dr. West's supplemental report. He indicated that the impairment rating was consistent with Figure 15-12, Digit Impairment Percent for Finger Amputation at Various Lengths, A.M.A., *Guides* 458 (6th ed. 2009). Dr. Slutsky also found that appellant reached MMI on April 13, 2016, rather than January 1, 2016 as Dr. West previously indicated.

By decision dated September 1, 2016, OWCP granted a schedule award for eight percent permanent impairment of the right middle finger. The award covered a 2.4-week period from April 13 through 29, 2016.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing federal regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions, and organs of the body. 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 of all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.⁷

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).⁸ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition should be Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁹ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹⁰

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁶ *T.L.*, Docket No. 17-0546 (issued September 5, 2017).

⁷ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010), see also Federal (FECA) Procedure Manual -- Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁸ See *Dale B. Larson*, 41 ECAB 481, 490 (1990); *id.* at Chapter 3.700.3.a.3 (January 2010).

⁹ A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹⁰ *Id.* at 383-419.

OWCP procedures provide that, after obtaining all necessary evidence, the file should be forwarded to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.¹¹

ANALYSIS

The issue on appeal is whether appellant has established greater than eight percent permanent impairment of his right middle finger, for which he previously received a schedule award. The Board finds that appellant has no greater than eight percent permanent impairment of the right middle finger.

Dr. West, an orthopedic surgeon, based upon a referral by OWCP, evaluated appellant and provided an opinion on the extent of permanent impairment. In an April 13, 2016 report, he diagnosed traumatic amputation of the distal phalanx, right long finger and noted that the amputation was appropriate at the distal phalanx with nice contour. Referencing Table 15-28, Impairment of Upper Limb Amputation at Various Levels, A.M.A., *Guides* 457, Dr. West found that appellant had eight percent permanent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. He found that there were no applicable adjustment modifiers, and thus, concluded that appellant had eight percent permanent impairment due to his accepted work injury.

OWCP routed the report of Dr. West to its medical adviser, Dr. Slutsky. Dr. Slutsky indicated that in order to provide an accurate rating, Dr. West should quantify the amount of distal phalanx amputation, citing Figure 15-5, Digit Impairment due to Finger Amputation at Various Lengths, A.M.A., *Guides* 426 (6th ed. 2009).

In a May 3, 2016 supplemental report Dr. West indicated that there was no discrepancy with his eight percent impairment rating for the third phalanx. He explained that according to Figure 15-5, eight percent did indeed only involve the tip of the digit. Dr. West did amend his prior report to reflect that appellant had an "[eight percent] digital (sic) impairment and a [one percent] upper extremity impairment."

In an August 4, 2016 report, Dr. Slutsky, OWCP's medical adviser, indicated that the final right middle finger digit impairment was eight percent, consistent with Dr. West's supplemental report.

The medical evidence of record applicable to the extent of appellant's permanent impairment of his right middle finger are the impairment rating opinions of Dr. West and OWCP's medical adviser Dr. Slutsky. Both physicians have provided opinions limiting appellant's permanent impairment to eight percent of the right middle finger. The Board finds that Dr. West and Dr. Slutsky properly utilized the A.M.A., *Guides* in calculating an eight percent impairment rating and their reports constitute the weight of the medical evidence. Appellant has not provided any additional medical evidence upon which a higher rating of permanent impairment could be based for purposes of an additional schedule award. The Board

¹¹ *Id.* at 411.

therefore finds that appellant has no more than eight percent permanent impairment of his right middle finger, for which he previously received a schedule award.

Appellant may request a schedule award or increased schedule award at any time 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 not established more than eight percent permanent impairment of his right middle finger, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 1, 2016 is affirmed.

Issued: November 9, 2017
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