

FACTUAL HISTORY

On August 24, 2015 appellant, then a 47-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she cut her thumb when pulling on a mail container that day. OWCP accepted a right thumb laceration. Appellant returned to light-duty work on August 27, 2015, and was performing full-time, full-duty work by September 23, 2015.

Dr. Richard L. Manzo, Board-certified in orthopedics and surgery of the hand, began treating appellant in October 2015 for the thumb laceration. He described the employment injury and noted appellant's complaint of intermittent, aching pain made worse by attempted right thumb flexion. Dr. Manzo indicated that an October 5, 2015 x-ray showed mild interphalangeal joint space narrowing, but no bony injury. Following physical examination, he diagnosed hypertrophic scar, contracture of the right thumb, and status post crush injury of the right thumb. Dr. Manzo continued to treat appellant. On August 29, 2016 he noted that appellant had not been seen since February, and that she denied pain with routine activities. Right thumb examination demonstrated a well-healed laceration that was mildly hypertrophic, but not sensitive to palpation. Thumb interphalangeal range of motion was 30 of hyperextension to 40 of flexion. Dr. Manzo diagnosed status post right thumb crush injury with laceration and interphalangeal joint extension contracture. He advised that, in accordance with Table 16-1 and Figure 16-12 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),² appellant had three percent permanent right thumb impairment, or one percent permanent impairment of the right hand.

On October 11, 2016 appellant filed a claim for a schedule award (Form CA-7). In November 2016, OWCP referred appellant to Dr. Balazs B. Somogyi, a Board-certified orthopedic surgeon, for a second opinion evaluation and impairment rating. In a December 24, 2016 report, Dr. Somogyi described the history of injury and noted his review of the medical record and appellant's complaint of range of motion (ROM) limitation of the right thumb and occasional pain and awkwardness with writing and using the thumb. He advised that appellant's ROM was comparable to the left thumb with no limitations, indicating that the only objective finding was a well-healed "hockey-stick" type scar over the dorsoradial aspect of the interphalangeal joint of the right thumb. Dr. Somogyi concluded that, under the sixth edition of the A.M.A., *Guides*,³ appellant had no ratable impairment, with December 24, 2016 the date of maximum medical improvement.

By decision dated January 18, 2017, OWCP denied appellant's claim for a schedule award finding that the weight of the medical evidence rested with the opinion of Dr. Somogyi.

On February 13, 2017 appellant requested reconsideration. She asserted that she had difficulty writing for long periods and right thumb ROM impairments.

In a nonmerit decision dated March 10, 2017, OWCP denied the reconsideration request, noting that the evidence submitted was insufficient to warrant merit review.

² A.M.A., *Guides* (5th ed. 2001).

³ *Id.* (6th ed. 2009).

LEGAL PRECEDENT -- ISSUE 1

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.⁴ Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.⁵ 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.⁶

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).⁷ The Board has approved the use by OWCP 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.⁸

ANALYSIS -- ISSUE 1

The merit issue in this appeal is whether appellant established entitlement to a schedule award for the accepted right thumb laceration.

The Board finds that this case is not in posture for decision.

Appellant’s treating physician Dr. Manzo reported on August 29, 2016 that she had three percent permanent impairment of the right thumb. He referenced the fifth edition of the A.M.A., *Guides* rather than the sixth edition. Dr. Manzo, however, also reported that appellant had interphalangeal joint extension contracture, noting right thumb ROM was 30 of hyperextension

⁴ See 20 C.F.R. §§ 1.1-1.4.

⁵ For a complete loss of use of an arm, an employee shall receive 312 weeks’ compensation. 5 U.S.C. § 8107(c)(1).

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

⁷ 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 and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁸ *Isidoro Rivera*, 12 ECAB 348 (1961).

to 40 of flexion. Dr. Somogyi, an OWCP referral physician, reviewed the record and concluded that appellant had no right thumb impairment under the sixth edition of the A.M.A., *Guides*. Dr. Somogyi did not reference a specific table or provide specific right thumb ROM measurements, other than to indicate that appellant had no limitation.

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 had been followed regarding the proper use of the diagnosis-based impairment (DBI) or the ROM methodology when assessing the extent of permanent impairment for schedule award purposes.⁹ The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.¹⁰ In *T.H.*, the Board concluded that OWCP physicians were at odds over the proper methodology for rating upper extremity impairment, having observed that 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 observed that physicians have interchangeably cited to language in the first printing or the second printing when justifying use of either ROM or DBI methodology. Because OWCP's own physicians were inconsistent in the application of the A.M.A., *Guides*, the Board found that OWCP could no longer ensure consistent results and equal justice under the law for all claimants.¹¹

In order to ensure consistent result and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the January 18, 2017 decision. Utilizing a consistent method for calculating permanent impairment for upper extremities applied uniformly, and after 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.¹²

In light of the Board's disposition regarding Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds this case is not in posture for decision.

⁹ *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

¹⁰ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹¹ *T.H.*, *supra* note 9.

¹² *See* FECA Bulletin No. 17-06 (issued May 8, 2017).

ORDER

IT IS HEREBY ORDERED THAT the March 10 and January 18, 2017 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further action consistent with this decision.

Issued: October 27, 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