United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 16-1904**
	)	**Issued: September 14, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Manchester, CT, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On September 27, 2016 appellant filed a timely appeal from an August 30, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has more than five percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On November 3, 2011 appellant, then a 46-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 28, 2011 he was delivering a parcel to a residence when he jammed his right hand while quickly closing a door to avoid a dog. He listed the nature

[1] 5 U.S.C. § 8101 *et seq.*

of his injury as sore right hand and wrist. OWCP accepted appellant's claim for right wrist sprain and loose body in the right wrist.[2]

On November 8, 2012 appellant underwent an authorized excision of nonunion hook of the hamate, reconstruction right flexor digitorum profundus tendon rupture, right fifth digit with palmaris longus ipsilateral graft, and repair of partial rupture of right flexor digitorum profundus tendon fourth digit. On January 2, 2014 he underwent authorized right ulnar shortening osteotomy and right palm fasciectomy. Appellant returned to full duty on July 2, 2014.

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

In a May 20, 2015 report, Dr. Stephen F. Scarangella, appellant's treating Board-certified orthopedic surgeon, stated that due to loss of range of motion (ROM) to the small finger and grip weakness as a consequence of his tendon injuries and hamate injury, appellant had 20 percent permanent impairment of his dominant right hand. In a September 18, 2015 addendum, Dr. Scarangella indicated that he based his rating on Table 16-34 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) as appellant had 10 percent upper extremity permanent impairment due to his grip loss as a result of his tendon rupture graft and partial harnate excision. In addition, he noted that appellant had a seven percent permanent disability rating to the small finger. Based on Table 16-21 of the fifth edition of the A.M.A., *Guide*s, Dr. Scarangella opined that appellant had an additional four percent permanent impairment to the small finger. He concluded that appellant has 10 percent permanent impairment rating to the upper extremity based on grip loss and 11 percent permanent impairment rating to the small finger based on ROM deficit.

By letter dated January 5, 2015, OWCP referred appellant to OWCP's medical adviser for a schedule award determination. In order to determine appellant's permanent impairment, the medical adviser applied the sixth edition of the A.M.A., *Guides*. With regard to the right small digit, he found that appellant had two percent digit impairment for loss of distal interphalangeal (DIP) joint extension.[3] The medical adviser had 14 percent digit impairment for loss of proximal interphalangeal (PIP) joint extension. He indicated that this resulted in 16 percent impairment of the small digit which was equivalent to 2 percent permanent impairment of the hand. With regard to the right ring digit, the medical adviser determined that appellant had six percent digital impairment for residual problems post status flexor tendon repair.[4] He noted that the six percent impairment of the right digit was equivalent to one percent impairment of the hand. Utilizing combined values for two percent impairment of the hand for residual problems with the right small digit and one percent impairment of the hand for residual problems with the right ring digit, resulted in three percent permanent impairment of the right upper extremity. The medical adviser noted that he calculated appellant's impairment based on ROM.

[2] The Board notes that appellant had a prior December 8, 2003 claim for a left shoulder injury that was accepted for left shoulder strain. As a result of this claim, appellant received a schedule award for 10 percent permanent impairment of the left upper extremity. OWCP File No. xxxxxx425.

[3] A.M.A., *Guides* 470, Table 15-31.

[4] *Id.* at 392, Table 15-2.

By letter dated February 25, 2016, OWCP referred appellant to Dr. John R. Corsetti, a Board-certified orthopedic surgeon, for a second opinion. In an April 4, 2016 report, Dr. Corsetti listed diagnoses of hook of hamate fracture, status post rescission; fifth finger flexor digitorum profundus rupture, status post reconstruction; partial rupture, right fourth flexor digitorum profundus tendon, status post repair; ulnocarpal impaction syndrome, right wrist, status post ulnar shortening osteotomy; and palmar fasciitis, status post excision, with recurrence. He indicated that, based on the sixth edition of the A.M.A., *Guides*, and appellant's work-related injury, he would estimate that appellant had five percent permanent digital impairment.[5] Dr. Corsetti opined that appellant had five percent permanent digital impairment[6] and five percent upper extremity impairment for wrist pain using Keinbock's Disease as a surrogate diagnosis.[7] In an August 5, 2016 addendum, he indicated that regarding appellant's wrist injury, pursuant to Table 15-3 page 396, he would assess three percent loss of function. Regarding appellant's right hand, pursuant to Table 15-31, Dr. Corsetti would assess five percent impairment of the fifth digit, which converted to zero percent impairment of the upper extremity. He therefore found that, based on a diagnosis-based impairment (DBI) methodology, appellant's permanent impairment of the right upper extremity was three percent.

In an August 18, 2016 report, OWCP's medical adviser stated that, utilizing the A.M.A., *Guides*, appellant had three percent small digit impairment for loss of PIP joint extension (Table 15-31, page 470) and two percent small digit impairment for loss of DIP joint extension. He noted that this resulted in five percent permanent impairment of the small digit which was the equivalent of zero percent upper extremity impairment. The medical adviser noted that appellant had five percent impairment for residual problems status post multiple surgeries including excision of a nonunion of the hook of the hamate pursuant to Table 15-3 of the AM.A, *Guides*.[8] Utilizing combined values, this resulted in five percent permanent impairment of the right upper extremity impairment. The medical adviser indicated that the five percent permanent impairment of the right upper extremity was the sole impairment of the right upper extremity resulting from the accepted work injury of October 28, 2011.

In a decision dated August 30, 2016, OWCP issued a schedule award for five percent permanent impairment of the right upper extremity.

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.[9] Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of

[5] *Id.* at 470, Table 15-31.

[6] *Id*.

[7] *Id.* at 396, Table 15-3.

[8] *Id.* at 396 Table 15-3.

[9] *See* 20 C.F.R. §§ 1.1-1.4.

use of specified members, functions, and organs of the body.[10] 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.[11]

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).[12] 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.[13]

ANALYSIS

The issue is whether appellant has more than five percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

Appellant's treating physician, Dr. Scarangella reported on May 20, 2015 that appellant had 20 percent permanent impairment of the right upper extremity due to loss of ROM. Dr. Scarangella however utilized the fifth edition of the A.M.A., *Guides*, rather than the sixth edition, to rate appellant's impairment.[14] On January 5, 2015 an OWCP medical adviser reviewed the record and concluded that, based upon loss of ROM, appellant had three percent permanent impairment of the right upper extremity. In an April 4, 2016 report, OWCP's second opinion physician, Dr. Corsetti related that appellant had three percent permanent impairment of the right upper extremity, pursuant to a DBI methodology for calculating permanent impairment. An OWCP medical adviser reviewed the record on August 18, 2016 and reported that appellant had five percent permanent impairment of the right upper extremity due to residual problems form his multiple surgeries. Appellant thereafter received a schedule award for five percent permanent impairment of the right upper extremity, based upon this August 18, 2016 report.

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

[11] 20 C.F.R. § 10.404. *See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[12] *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).

[13] *Isidoro Rivera*, 12 ECAB 348 (1961).

[14] *See supra* note 12.

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.[15] The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.[16] In *T.H.*, the Board concluded that OWCP physicians were 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 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.[17]

In order to ensure a consistent result and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the August 30, 2016 decision. Utilizing 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 that this case is not in posture for decision.

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

[16] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[17] *Supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 30, 2016 is set aside, and the case is remanded for further action consistent with this decision.

Issued: September 14, 2017
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