

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

J.S., Appellant	)	
	)	
and	)	Docket No. 18-1635
	)	Issued: May 15, 2019
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bellingham, MA, Employer	)	
	)	

*Appearances:*  
William Bothwell, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 28, 2018 appellant, through his representative, filed a timely appeal from an August 17, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).

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<sup>1</sup> 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.

Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish more than 10 percent permanent impairment of his left hand, for which he previously received a schedule award.

### **FACTUAL HISTORY**

On March 12, 2012 appellant, then a 43-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed left thumb pain as a result of 30 years of repetitive casing and sorting mail as a part of his employment duties. By decision dated March 22, 2012, OWCP accepted the claim for left thumb osteoarthritis.

Appellant sought treatment with Dr. Philip Blazar, a Board-certified orthopedic surgeon. On June 11, 2012 Dr. Blazar performed an authorized left thumb carpometacarpal arthroplasty with interposition.

In a July 26, 2017 report, Dr. Frank A. Graf, a Board-certified orthopedic surgeon, evaluated appellant and provided findings pertaining to his left thumb. With respect to the left thumb, he diagnosed left thumb basilar degenerative osteoarthritis with diminished pinch and grasp status post arthroplasty and soft tissue procedure basilar joint of the left thumb. Dr. Graf opined that appellant's left thumb carpometacarpal joint had reached maximum medical improvement (MMI), Dr. Graf determined that there were permanent changes at the left basilar joint of the thumb. Utilizing Table 15-2, Digit Regional Grid, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>4</sup> he determined that carpometacarpal joint instability warranted the default value of 15 percent permanent impairment of the left thumb.<sup>5</sup>

On September 12, 2017 appellant filed a claim for a schedule award (Form CA-7).

On September 27, 2017 OWCP routed Dr. Graf's report and the case file to Dr. Herbert White Jr., an OWCP district medical adviser (DMA) Board-certified in occupational medicine, for review and a determination as to whether appellant sustained permanent impairment of his left thumb and the date of MMI.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the August 17, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> *Id.* at 393, Table 15-2.

In an October 1, 2017 report, the DMA discussed findings in the medical records pertaining to appellant's left thumb and noted that x-rays dated February 14, 2013 revealed postsurgical changes of the left thumb carpometacarpal joint. Utilizing Table 15-2, Digit Regional Grid, of the A.M.A., *Guides*, he provided a diagnosis-based impairment (DBI) rating based upon a thumb carpometacarpal arthroplasty.<sup>6</sup> The DMA utilized the net adjustment formula to calculate 26 percent permanent impairment of the left thumb.<sup>7</sup> He reported that because the joint involved the hand, the digit impairment would be converted to a hand impairment. In accordance with Table 15-12, the DMA converted the 26 percent digit impairment to 10 percent permanent impairment of the left hand.<sup>8</sup> He further reported that he was unable to render a rating based on the range of motion (ROM) method because no thumb ROM findings were provided in the medical records.

The DMA explained that Dr. Graf obtained a left digit impairment of 15 percent using the DBI method with the diagnosis of thumb carpometacarpal instability while he calculated 26 percent impairment using the diagnosis of carpometacarpal arthroplasty. He reported that the A.M.A., *Guides* provide that if there is more than one method to rate a particular impairment, the method producing the higher rating should be used. In this instance, the carpometacarpal arthroplasty diagnosis produced the higher rating. He concluded that appellant sustained 10 percent permanent impairment of the left hand and that MMI was reached on July 26, 2017, the date of Dr. Graf's examination.

On February 6, 2018 OWCP routed the DMA's October 1, 2017 report to Dr. Graf for comment pertaining to his left thumb impairment rating. By letter dated April 24, 2018, Dr. Graf noted review of the DMA's report and indicated that he had no problems with his calculations.

On June 21, 2018 OWCP routed the case file and referred appellant to Dr. Christopher Geary, a Board-certified orthopedic surgeon, for a second opinion evaluation and impairment evaluation of the left thumb using both ROM and DBI methods for evaluating permanent impairment.

In his July 11, 2018 report, Dr. Geary provided three measurements pertaining to thumb ROM. He measured interphalangeal flexion at 60 degrees for one percent impairment, extension at 20 degrees for zero percent impairment, metacarpophalangeal joint flexion at 40 degrees for two percent impairment, metacarpophalangeal joint extension at 10 degrees for zero percent impairment, carpometacarpal joint adduction at three centimeters for four percent impairment, carpometacarpal joint abduction at 40 degrees for two percent impairment, and metacarpophalangeal opposition at four centimeters for nine percent impairment. This combined to equal 18 percent permanent impairment based on the ROM method.

Dr. Geary reported that utilizing the DBI method, he would rate the diagnosis of left thumb carpometacarpal arthritis with subsequent arthroplasty.<sup>9</sup> Application of the net adjustment formula

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<sup>6</sup> *Id.* at 394, Table 15-2.

<sup>7</sup> *Id.* at 411.

<sup>8</sup> *Id.* at 421, Table 15-12.

<sup>9</sup> *Supra* note 5.

resulted in 26 percent digit impairment. Dr. Geary explained that the DBI method should be used since it provided a higher rating than the ROM method. He converted the 26 percent left thumb impairment to 10 percent permanent impairment of the left hand. Dr. Geary concluded that appellant had reached MMI on the date of Dr. Graf's examination, July 26, 2017.

By decision dated August 17, 2017, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left hand. The date of MMI was July 26, 2017. The award covered a period of 24.4 weeks from July 26, 2017 to January 12, 2018.

### **LEGAL PRECEDENT**

The schedule award provision of FECA and its implementing regulations 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.<sup>10</sup> 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. Through its implementing regulations, OWCP adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>11</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>12</sup>

In addressing upper extremity impairments, the sixth edition requires identification of the impairment class of diagnosis (CDX) condition, which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).<sup>13</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>14</sup>

The A.M.A., *Guides* also provide that ROM impairment methodology is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other DBI sections are applicable.<sup>15</sup> If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.<sup>16</sup> Adjustments for functional history may be made if the evaluator determines that the

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<sup>10</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>11</sup> 20 C.F.R. § 10.404; *L.T.*, Docket No. 18-1031 (issued March 5, 2019); *see also Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>12</sup> *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (March 2017).

<sup>13</sup> A.M.A., *Guides* 383-492.

<sup>14</sup> *Id.* at 411.

<sup>15</sup> *Id.* at 461.

<sup>16</sup> *Id.* at 473.

resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.<sup>17</sup>

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology *versus* the ROM methodology for rating of upper extremity impairments.<sup>18</sup> Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

“Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify (1) the methodology used by the rating physician (*i.e.*, DBI or ROM) and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A.,] Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.*” (Emphasis in the original.)<sup>19</sup>

The Bulletin further advises:

“If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE.”<sup>20</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP’s medical adviser providing rationale for the percentage of impairment specified.<sup>21</sup>

### ANALYSIS

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

Following Dr. Graf’s July 26, 2017 impairment rating, OWCP routed the case file to Dr. White, serving as a DMA, for an opinion regarding appellant’s permanent impairment of the left thumb. In his October 1, 2017 report, the DMA related that appellant’s impairment should be

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<sup>17</sup> *Id.* at 474.

<sup>18</sup> FECA Bulletin No. 17-06 (May 8, 2017).

<sup>19</sup> A.M.A., *Guides* 477.

<sup>20</sup> FECA Bulletin No. 17-06 (May 8, 2017); *V.L.*, Docket No. 18-0760 (issued November 13, 2018); *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

<sup>21</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (March 2017).

rated for the diagnosis for carpometacarpal arthroplasty.<sup>22</sup> He thereafter explained his rating and concluded that appellant had 26 percent permanent impairment of the left thumb, which converted to 10 percent impairment of the left hand.<sup>23</sup> The DMA properly noted, however, that ROM findings were not provided to ascertain a ROM rating.

OWCP referred appellant to Dr. Geary for a second opinion evaluation and impairment rating utilizing both DBI and ROM methods for rating permanent impairment. In his July 11, 2018 report, Dr. Geary properly provided three range of motion measurements in accordance with the A.M.A., *Guides* and found that the ROM method would result in 18 percent permanent impairment of the left digit. He also utilized the DBI rating method and found that appellant sustained 26 percent impairment to the left digit based on the DBI method. Dr. Geary's report was sufficient to warrant referral to an OWCP DMA to determine the extent of permanent impairment of appellant's left thumb. After obtaining the permanent impairment rating from second opinion physician, Dr. Geary, based on both ROM and DBI assessments, OWCP should have referred the case record back to a DMA for his review and findings relative to impairment.<sup>24</sup> OWCP procedures provide that the DMA should verify the calculations of the rating physician and determine the percentage of impairment according to the sixth edition of the A.M.A., *Guides*.<sup>25</sup>

Consequently, the Board finds that further development of the medical evidence is required to determine the extent of appellant's permanent impairment for schedule award purposes. The case will be remanded for Dr. Geary's report to be routed to the DMA for further development in accordance with OWCP procedures. After such further development as deemed necessary, it shall issue a *de novo* merit decision.

### **CONCLUSION**

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

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<sup>22</sup> *Supra* note 6.

<sup>23</sup> A.M.A., *Guides* 421, Table 15-12.

<sup>24</sup> *Supra* note 21.

<sup>25</sup> *See supra* note 21; *see also J.M.*, Docket No. 16-0224 (issued May 20, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 17, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 15, 2019  
Washington, DC

Christopher J. Godfrey, 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