

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

J.V., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TRAVIS
AIR FORCE BASE, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 20-1368
Issued: March 1, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 6, 2020 appellant filed a timely appeal from an April 23, 2020 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 13 percent permanent impairment of his right upper extremity and 2 percent permanent impairment of his left thumb for which he received schedule award compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 17, 2013 appellant, then a 56-year-old cargo scheduler, filed an occupational disease claim (Form CA-2) alleging that he sustained arthritis at the base of both thumbs causally related to factors of his federal employment.³ OWCP accepted the claim for localized primary osteoarthritis of the hands.

On May 7, 2015 appellant underwent an arthroplasty of the carpometacarpal (CMC) joint of the right thumb and a right one bone carpectomy and hemitrapeziectomy. He stopped work on May 7, 2015 and returned to work on July 20, 2015.

On November 25, 2015 appellant filed a claim for a schedule award (Form CA-7).

In a February 1, 2016 letter, OWCP requested that Dr. Chunbo C. Cai, a Board-certified physiatrist, submit an impairment evaluation addressing whether appellant had reached maximum medical improvement (MMI) and providing an impairment rating using the sixth edition of the A.M.A., *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

In a February 18, 2016 response, Dr. Cai advised that she did not perform impairment ratings using the sixth edition of the A.M.A., *Guides*. She opined that appellant had reached MMI on January 28, 2016. Dr. Cai diagnosed osteoarthritis of the bilateral right first CMC joint. She found full strength of both wrists and measured range of motion (ROM) of the wrists and thumbs bilaterally.

On August 5, 2016 OWCP referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion examination.

In a September 6, 2016 impairment evaluation, Dr. Swartz discussed appellant's complaints of numbness at the base of the right thumb around a branch of the radial nerve and pain at the base of both thumbs. He diagnosed an interposition arthroplasty of the CMC joint of the right thumb due to osteoarthritis, left thumb osteoarthritis at the CMC joint, a right hemitrapeziectomy for osteoarthritis of the right wrist at the scaphotrapezium joint, and status post arthroplasty of the scaphotrapezium joint of the right wrist. On examination Dr. Swartz found hypesthesias near the scar over the right thumb and right radial wrist and normal left thumb and wrist sensation. He measured ROM of the bilateral thumbs and wrists. Dr. Swartz advised that he was rating appellant's right thumb impairment using the ROM method as the diagnosis-based impairment (DBI) method set forth at Table 15-2 on page 393 of the A.M.A., *Guides* applied only

² Docket No. 18-1052 (issued November 8, 2018).

³ OWCP previously accepted that appellant sustained a right foot contusion on September 9, 2003 under OWCP File No. xxxxxx622.

⁴ A.M.A., *Guides* (6th ed. 2009).

with normal motion. Using the ROM method, he found 7 percent permanent impairment of the right thumb and 10 percent permanent impairment of the right wrist, for a total right upper extremity impairment of 13 percent. Dr. Swartz found no impairment of the left upper extremity using the ROM method. He further determined that appellant had no instability of the CMC joint and, thus, no impairment using the DBI method under Table 15-2.

On October 24, 2016 Dr. Michael M. Katz, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA), discussed appellant's history of reconstructed surgery on the right thumb and a right hemitrapeziectomy for osteoarthritis of the right scaphotrapezium joint. He concurred with Dr. Swartz' finding of 10 percent permanent impairment of the right upper extremity due to loss of ROM of the right wrist and 3 percent permanent impairment due to loss of ROM of the thumb, for a total right upper extremity impairment of 13 percent. Dr. Katz also concurred with his finding of no impairment of the left upper extremity. He noted that Dr. Swartz had properly rated the impairment using the ROM method as directed by the wrist regional grid at Table 15-3 and the digit regional grid at Table 15-2 in the absence of normal motion.

By decision dated December 20, 2016, OWCP granted appellant a schedule award for 13 percent permanent impairment of the right upper extremity. It determined that he had no impairment of the left upper extremity. The period of the award ran from September 6, 2016 to July 16, 2017.

Appellant, on September 15, 2017, requested reconsideration.

By decision dated December 6, 2017, OWCP denied modification of its December 20, 2016 decision.

Appellant appealed the Board. By decision dated November 8, 2018, the Board set aside the December 6, 2017 decision.⁵ It determined that Dr. Swartz had not obtained three independent ROM measurements prior to determining the extent of impairment in accordance with FECA Bulletin No. 17-06.⁶ The Board remanded the case for OWCP to obtain a supplemental report from Dr. Swartz containing three independent ROM measurements for the thumbs and right wrist pursuant to FECA Bulletin No. 17-06.

On January 29, 2019 OWCP referred appellant to Dr. Swartz for an impairment evaluation.

In a report dated February 22, 2019, Dr. Swartz discussed appellant's complaints of pain in the bilateral thumbs, left more than right. On examination he found a positive Tinel's test in the bilateral hands. For the right wrist, Dr. Swartz obtained three ROM measurements with maximum measurements for dorsiflexion of 45 degrees, palmar flexion of 80 degrees, radial deviation of 20 degrees, and ulnar deviation of 30 degrees. For the left wrist, he measured maximum ROM measurements for dorsiflexion of 45 degrees, palmar flexion of 80 degrees, radial deviation of 20 degrees, and ulnar deviation of 30 degrees. For the right thumb, Dr. Swartz obtained three ROM measurements of each joint with the maximum measurements for abduction of the CMC joint of

⁵ *Supra* note 2.

⁶ FECA Bulletin No. 17-06 (issued May 8, 2017).

50 degrees, adduction of one and a half centimeters, and opposition of eight centimeters. He further provided ROM measurements for the metaphalangeal (MP) joint of 30 degrees and the interphalangeal (IP) joint of 60 degrees.⁷ Dr. Swartz provided the maximum ROM measurements for the left thumb joints of abduction of the CMC joint of 50 degrees, adduction of two centimeters, opposition of eight centimeters, and motion at the MP joint of 45 degrees, and the IP joint of 60 degrees. He found that appellant had five percent permanent impairment of the right thumb due to loss of ROM, or two percent permanent impairment of the right upper extremity. Dr. Swartz further found two percent impairment of the left thumb due to loss of ROM. He noted that he had also measured ROM of the wrists, but found that the wrists were not part of the current claim.

On September 24, 2019 Dr. Katz noted that appellant had previously received a schedule award for 13 percent permanent impairment of the right upper extremity due to a hand/wrist condition. For the right thumb, he used Table 15-30 on page 468 of the A.M.A., *Guides* and found that 60 degrees flexion at the IP joint yielded one percent impairment, 30 degrees flexion at the MP joint yielded four percent impairment, one and a half centimeters adduction yielded no impairment, 50 degrees radial deviation yielded no impairment, and eight centimeters opposition yielded no impairment. Dr. Katz further found that extension at the IP and MP joints were within normal limits. He added the impairment ratings to find five percent permanent impairment of the right thumb or two percent permanent impairment of the right upper extremity. For the left thumb, Dr. Katz determined that 60 degrees flexion at the IP joint yielded one percent impairment, two centimeters adduction yielded no impairment, 50 degrees radial deviation yielded no impairment, eight centimeters opposition yielded no impairment and 45 degrees flexion at the MP joint yielded one percent impairment, and that extension at the IP joint and MP joint were within normal limits. He added the impairments due to loss of ROM to find two percent permanent impairment of the left thumb or one percent permanent impairment of the left upper extremity according to Table 15-12 on page 421 of the A.M.A., *Guides*. Dr. Katz further found 26 percent permanent impairment of the right thumb, or 9 percent permanent impairment of the right upper extremity, and 6 percent permanent impairment of the left thumb, for a CMC arthroplasty using the DBI method set forth in Table 15-2 on page 394, at the digit regional grid.

By decision dated April 23, 2020, OWCP granted appellant a schedule award for two percent permanent impairment of the left thumb. It indicated that, “Overall [r]ight upper extremity impairment equals two percent. However, a prior [schedule award] of 13 percent right upper extremity was previously issued on December 20, 2016. Therefore, no additional right upper schedule award payment is due beyond the previously paid 13 percent.” The decision included that the period of the award ran for 1.5 weeks from February 22 to March 4, 2019.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁸ and its implementing federal regulation,⁹ set forth the number of weeks of compensation payable to employees sustaining permanent

⁷ Dr. Swartz did not indicate whether the measurements were for flexion or extension.

⁸ *Supra* note 1.

⁹ 20 C.F.R. § 10.404.

impairment from loss, or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.¹⁰ 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.¹¹

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's International Classification of Functioning Disability and Health (ICF).¹² Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).¹³ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁴ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹⁵

ANALYSIS

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

In rating an impairment due to loss of ROM of the thumbs, Table 15-30 provides that the evaluator should obtain flexion and extension measurements for the IP and MCP joints, and adduction, radial abduction, and opposition measurements for the CMC joints.¹⁶ Dr. Swartz, however, did not specify whether he had measured extension for the IP and MCP joints of appellant's thumbs. As his ROM measurements are incomplete, his opinion is insufficient to establish the extent of permanent impairment.¹⁷

¹⁰ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also id.* at Chapter 3.700, Exhibit 1 (January 2010).

¹¹ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹² A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3, International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹³ *Id.* at 494-531.

¹⁴ *Id.* 411.

¹⁵ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁶ A.M.A., *Guides* at 468, Table 15-30.

¹⁷ *See J.A.*, Docket No. 11-0859 (issued October 11, 2011).

Additionally, Dr. Swartz found that any impairment of appellant's right wrist due to motion loss should not be included as he did not have an accepted right wrist condition. OWCP, however, previously granted him a schedule award for a right wrist impairment. In his September 6, 2016 impairment evaluation, Dr. Swartz found that appellant had undergone a right hemitrapeziectomy for osteoarthritis of the right wrist at the scaphotrapezial joint, and was status post arthroplasty of the scaphotrapezial joint of the right wrist. On remand OWCP should refer appellant, together with a SOAF and case record to a physician in the appropriate field of medicine to determine whether appellant's accepted claim includes a right wrist condition and, if so, the extent of any resulting impairment for the wrist and thumbs in accordance with the provisions of the A.M.A., *Guides*.¹⁸ Following this and such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2020 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: March 1, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ See *L.G.*, Docket No. 07-0090 (issued May 16, 2007).