United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 21-0247**
	)	**Issued: February 25, 2022**
DEPARTMENT OF THE INTERIOR, GREAT ONYX JOB CORPS, MAMMOTH CAVE NATIONAL PARK, Mammoth Cave, KY, Employer	)	

Appearances:
Gregory Crutcher, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 1, 2020 appellant, through counsel, filed a timely appeal from a June 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[1] 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.

[2] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from June 8, 2020, the date of OWCP's last decision, was December 5, 2020. As this fell on a Saturday, appellant had until Monday, December 7, 2020 to file the appeal. *Id.* Because using December 8, 2020, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is December 1, 2020, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

Federal Employees' Compensation Act[3] (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 greater than five percent permanent impairment of his right upper extremity for which he previously received a schedule award.

FACTUAL HISTORY

On June 20, 1979 appellant, then an 18-year-old carpenter, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained lacerations of the right index and middle fingers when his right hand got caught in a table saw while in the performance of duty. OWCP accepted his claim for laceration of the right index finger and laceration of the right middle finger. Appellant did not immediately stop work.

On September 27, 2013 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a report dated December 15, 1981, Dr. Erdogan Atasoy, a Board-certified general surgeon, noted examining appellant on December 7, 1981and opined that appellant had permanent partial disability due to an industrial accident on June 20, 1979. He noted 50 percent permanent impairment of the right middle finger, 7.5 percent permanent impairment of the right hand, 6.7 percent permanent impairment of the right upper extremity, and 4 percent permanent impairment of the whole body.

In an August 8, 2014 letter, OWCP requested that appellant submit an impairment evaluation from his physician based on a recent examination addressing whether he had reached maximum medical improvement (MMI) and providing an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[4]

In an August 21, 2014 report, Dr. Yorell Manon-Matos, a Board-certified general surgeon, treated appellant for an "old injury" to his right index and right middle fingers. Appellant reported sustaining a complex laceration from a table saw in 1979. He noted that appellant received a disability rating in 1981, which was deemed invalid because it was unclear whether it was completed according to the A.M.A., *Guides*. Dr. Manon-Matos diagnosed right index finger and right middle finger table saw injury. In a September 4, 2014 report, he indicated that appellant was evaluated for a schedule award. Appellant reported sustaining a table saw injury to his right middle finger in 1979, which required surgery to reattach the long finger. He reported stiffness and aching pain in the right middle finger and proximal interphalangeal (PIP) joint, limited motion,

[3] 5 U.S.C. § 8101 *et seq*.

[4] A.M.A., *Guides* (6th ed. 2009).

occasional numbness in the middle finger, and obvious right middle finger PIP joint enlargement on the radial side.

Utilizing the range of motion (ROM) rating method Dr. Manon-Matos referenced Figure 15-13, page 462, and Table 15-31, page 470 to find: 35 percent permanent impairment for flexion of the PIP joint at -15/60 degrees; 0 percent permanent impairment for flexion of the metacarpophalangeal (MCP) joint at 15/90 degrees; and 25 percent permanent impairment for distal interphalangeal (DIP) joint at 10/32 degrees. He documented one motion per joint movement. Dr. Manon-Matos combined these values pursuant to the Combined Values Chart on page 604 to equal 51 percent permanent impairment for the right long finger digit impairment for ROM, which converted to 10 percent permanent impairment for the hand and 9 percent permanent impairment for the right upper extremity pursuant to Table 15-12, page 421.

On January 20, 2015 Dr. Morely Slutsky, a Board-certified orthopedist, serving as a district medical adviser (DMA), reviewed a statement of accepted facts (SOAF) and the medical record, including Dr. Manon-Matos' August 29, 2014 findings. He indicated that Dr. Manon-Matos provided invalid upper extremity ROM measurements. Dr. Slutsky advised that Dr. Manon-Matos documented only one motion per joint movement, which was not consistent with the validity criteria in section 15.7, page 464 of the A.M.A., *Guides* for measuring ROM. As such, the ROM measurements were not valid for impairment calculations.

On August 13, 2015 OWCP requested that Dr. Manon-Matos review DMA Dr. Slutsky's January 20, 2015 report and indicate whether he concurred with the his findings. If he did not, it requested that he provide the specific reasons in a narrative report.

In a letter dated August 26, 2015, Dr. Manon-Matos' medical practice indicated that it was unable to fulfill the request for a supplementary report for appellant, as Dr. Manon-Matos was no longer with the medical practice and the therapist who took the measurements for the rating was also not associated with the practice any longer.

On October 23, 2015 appellant was evaluated by Dr. Frank O. Bonnarens, a Board-certified orthopedist, for a right hand injury that occurred when he was operating a table saw at work on June 20, 1979. He reported being able to use his finger and continued to be employed. Physical examination of the right middle finger revealed MCP ROM of 0 to 100 degrees, PIP of 10 to 70 degrees, DIP joint of 0 to 40 degrees, and decreased sensation in the radial aspect of the finger. Dr. Bonnarens opined that appellant was status post injury to the finger from a table saw who had a good result and was currently working regular duty. He indicated that he did not have his medical records from the time of injury, but opined that appellant was at MMI by the end of 1980.

On January 11, 2017 Dr. Slutsky, serving as a DMA, reviewed a SOAF and the medical record, including Dr. Manon-Matos' August 29, 2014 findings and Dr. Bonnarens' October 23, 2015 report. He indicated that the ROM findings from the physicians were fairly consistent. Dr. Slutsky used Dr. Bonnarens' findings for final permanent impairment calculations. He utilized the ROM rating method and referenced Figure 15-13, page 462 and Table 15-31, page 470 to find 10 percent permanent impairment for flexion of the DIP joint at 40 degrees, 21 percent permanent impairment for flexion of the PIP joint at 70 degrees, and 7 percent permanent impairment for

flexion of the MCP joint at 100 degrees. Dr. Slutsky combined these values pursuant to the Combined Values Chart on page 604 to equal 34 percent permanent impairment for the digit. He assigned a grade modifier for functional history (GMFH) of 2 based on the *Quick*DASH score of 50 per Table 15-7, page 406. Dr. Slutsky assigned a grade modifier for physical examination (GMPE) of 2 for decreased ROM pursuant to Table 15-8, page 408. Using Table 15-35, he noted that the final finger ROM impairment increased by 5 percent for right middle finger digit impairment of 36 percent, which converted to 6 percent permanent impairment of the right upper extremity pursuant to Table 15-12, page 421. Dr. Slutsky noted that MMI occurred on October 23, 2015.

On February 13, 2018 OWCP requested clarification from Dr. Slutsky, the DMA, with regard to calculations for impairment based upon the diagnosis-based impairment (DBI) rating method of the A.M.A., *Guides* and to explain which method provided the higher rating.

On February 28, 2018 Dr. Slutsky indicated that, since he previously reviewed appellant's case, OWCP adopted new upper extremity ROM requirements. He noted that there must be three measurements for each joint motion at the time of the rating examination. Dr. Slutsky therefore advised that Dr. Manon-Matos' and Dr. Bonnarens' reports provided invalid ROM measurements. He rated appellant pursuant to the DBI method. With regard to the DBI rating method, under Table 15-2 (Digit Regional Grid), page 392, the class of diagnosis (CDX) for soft tissue injury in the right middle finger resulted in a class 1 impairment, grade C, with a default value of four for the digit. Dr. Slutsky assigned a GMFH of 2 and a GMPE of 1. He found that a grade modifier for clinical studies (GMCS) was not applicable. Dr. Slutsky utilized the net adjustment formula, (GMFH - CDX + (GMPE - CDX) = (2 - 1) + (1 - 1) = +1, which resulted in a grade D or five percent permanent impairment of the right upper extremity.

On March 7, 2018 OWCP requested clarification from Dr. Slutsky, the DMA, with regard to his reports dated January 11, 2017 and February 28, 2018. It indicated that, by report dated January 11, 2017, he calculated 36 percent permanent impairment based on ROM findings from the treating physicians. However, on February 28, 2018 Dr. Slutsky found the ROM findings invalid. OWCP requested that he explain why the ROM findings were invalid and why he assigned 36 percent permanent impairment in the 2017 report and then 5 percent permanent impairment in the 2018 report. It requested that Dr. Slutsky provide both the ROM and DBI impairment calculations and explain which impairment is higher.

In a report dated March 24, 2018, Dr. Slutsky noted that there must be three measurements for each joint motion at the time of the rating examination. He advised that Dr. Manon-Matos' and Dr. Bonnarens' reports provided invalid ROM measurements. Dr. Slutsky rated appellant pursuant to the DBI method. With regard to the DBI rating method, under Table 15-2 (Digit Regional Grid), page 392, the CDX for soft tissue injury in the right middle finger resulted in a class 1 impairment, grade C, with a default value of four for the digit. Dr. Slutsky utilized the net adjustment formula and assigned a GMFH of 2, a GMPE of 1, and a GMCS of 0 as there was no studies specific to the condition being rated. He again utilized the net adjustment formula (GMFH - CDX) + (GMPE - CDX) = (2 - 1) + (1 - 1) = +1, which resulted in a grade D or five percent permanent impairment of the digit.

On April 26, 2018 OWCP requested that appellant submit an impairment evaluation from his physician based on a recent examination providing an impairment rating using the A.M.A., *Guides*. It further noted that if the evaluator found an organic basis for restricted ROM he must provide three independent measurements.

In a letter dated October 10, 2018, appellant indicated that Dr. Manon-Matos and Dr. Bonnarens would not perform additional examinations and requested OWCP refer appellant to a physician who could perform the impairment rating pursuant to the A.M.A., *Guides*.

On May 9, 2019 OWCP referred appellant, along with a SOAF and a series of questions, to Dr. Anbu K. Nadar, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a June 15, 2019 medical report, Dr. Nadar described appellant's June 20, 1979 employment injury. He discussed appellant's medical history, reviewed diagnostic reports, and provided findings on physical examination. Findings on examination of the right index finger revealed a well-healed laceration and skin graft on the dorsal aspect of the distal phalanx, minimal tenderness to deep palpation, the joint was stable, and no neurological deficit. Dr. Nadar noted ROM of the DIP joint was 70 degrees, PIP joint was 100 degrees, and the MCP joint of 20 to 90 degrees. Examination of the right middle finger revealed a well-healed laceration over the dorsal aspect of the PIP joint and base of the middle phalanx, tenderness to deep palpation, slight ulnar deviation of the right middle finger, and intact sensation. ROM of the DIP joint was 60 degrees, the PIP joint was 70 degrees, and the MCP joint was 15 to 90 degrees. Dr. Nadar indicated that appellant reached MMI on June 20, 2019. He diagnosed lacerations of the right index and middle fingers with residual stiffness.

Utilizing the ROM rating method[5] to rate the right middle finger Dr. Nadar referenced Figure 15-13, page 462 and Table 15-31, page 470 to find 10 percent permanent impairment for flexion of the DIP joint at 60 degrees, 21 percent permanent impairment for flexion of the PIP joint at 70 degrees, and 0 percent permanent impairment for flexion of the MCP joint at 15 to 90 degrees.[6] He combined these values pursuant to the Combined Values Chart on page 604 to equal 29 percent permanent impairment for the digit converted to 6 percent permanent impairment of the hand and 5 percent impairment for the right upper extremity pursuant to Table 15-12, page 422.

With regard to the DBI rating method, under Table 15-2 (Digit Regional Grid), page 392, the CDX for right middle finger flexor tendon rupture/laceration resulted in a class 1 impairment, grade C, with a default value of six for the digit. Dr. Nadar assigned a GMFH of 1 per Table 15-7, page 406. He assigned a GMPE of 1 pursuant to Table 15-8, page 408. Dr. Nadar assigned a GMCS of 1 pursuant to Table 15-9, page 410. He utilized the net adjustment formula (1 - 1) + (1 -

[5] Dr. Nadar complied with the validity criteria in section 15.7, page 464 A.M.A., *Guides* which provides that if the evaluator finds an organic basis for restricted ROM he must provide three independent measurements per joint after a warm-up.

[6] With regard to the right index finger, Dr. Nadar applied the ROM method pursuant to Figure 15-13, page 462 and Table 15-31, page 470 to find zero percent permanent impairment for flexion of the DIP joint at 70 degrees, zero percent permanent impairment for flexion of the PIP joint at 100 degrees, and zero percent permanent impairment for flexion of the MCP joint at 20 to 90 degrees.

1) + (1-1) = zero, which resulted in a grade C or six percent permanent impairment of the right middle finger.

On August 24, 2019 Dr. Slutsky reviewed Dr. Nadar's June 15, 2019 findings and concurred in his findings under the ROM method and the DBI method. He indicated that the ROM method resulted in greater impairment and pursuant to the A.M.A., *Guides* if more than one method is available to rate a particular impairment condition the method producing the higher rating must be used. Using the Combined Values Chart, page 604, this resulted in 29 percent permanent impairment of the middle finger, which exceeded the DBI method of 5 percent permanent impairment of the digit. Applying Table 15-12, page 421, 29 percent impairment of the middle finger converted to 5 percent permanent impairment for the right upper extremity. Dr. Slutsky found the date of MMI was October 23, 2015.

By decision dated October 23, 2019, OWCP granted appellant a schedule award for five percent permanent impairment of the right upper extremity. The award ran for 15.6 weeks from June 15 through October 2, 2019 and was based on the June 15, 2019 report by Dr. Nadar and the August 24, 2019 impairment rating of DMA Dr. Slutsky.

On November 1, 2019 appellant through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was scheduled for March 13, 2020, but counsel subsequently requested a review of the written record in lieu of an oral hearing. Counsel submitted a brief asserting various errors and deficiencies by the DMA on the part of OWCP.

By decision dated June 8, 2020, an OWCP hearing representative affirmed the October 23, 2019 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] and its implementing regulations[8] 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. 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 A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[9] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[10] The Board has approved the

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id. See also, Ronald R. Kraynak*, 53 ECAB 130 (2001).

[10] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id*. at Chapter 2.808.5a (March 2017).

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]

In addressing upper extremity impairments, the sixth edition requires identification of the impairment CDX condition, which is then adjusted by a GMFH, GMPE, and GMCS.[12] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13]

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.[14] 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.[15] Adjustments for functional history may be made if the evaluator determines that the resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.[16]

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.[17] 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.)"[18]

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

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

[12] A.M.A., *Guides* 383-492.

[13] *Id.* at 411.

[14] *Id.* at 461.

[15] *Id.* at 473.

[16] *Id.* at 474.

[17] FECA Bulletin No. 17-06 (May 8, 2017).

[18] A.M.A., *Guides* 477.

should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the [claims examiner] CE."[19]

The Board has held that where the residuals of an injury to a member of the body specified in the schedule award provisions of FECA[20] extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, or a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.[21]

OWCP's 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 the medical adviser providing rationale for the percentage of impairment specified.[22]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than five percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

OWCP initially awarded appellant five percent permanent impairment of the right upper extremity. Upon further development of the claim, it referred appellant to Dr. Nadar for a second opinion evaluation and opinion regarding permanent impairment of appellant's right upper extremity under both the DBI and ROM impairment methodology. In his June 15, 2019 report, Dr. Nadar opined that appellant had six percent permanent impairment of the right middle finger[23] and five percent impairment of the right upper extremity under the DBI methodology.[24] With regard to the ROM impairment methodology he calculated 29 percent permanent impairment for the digit converted to 6 percent permanent impairment of the hand and 5 percent impairment for

[19] 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).

[20] 5 U.S.C. § 8107.

[21] *C.W.*, Docket No. 17-0791 (issued December 14, 2018); *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983). *See supra* note 10 at Chapter 2.808.5(e) (March 2017).

[22] *See supra* note 10 at Chapter 2.808.6(f) (March 2017); *see D.J.*, Docket No. 19-0352 (issued July 24, 2020).

[23] Dr. Nadar calculated impairment pursuant to the ROM method for the right index finger of zero. *See supra* note 6.

[24] With regard to the DBI rating method, under Table 15-2 (Digit Regional Grid), page 392, the CDX for right middle finger flexor tendon rupture/laceration resulted in a class 1 impairment, grade C, with a default value of six for the digit. Dr. Nadar assigned a GMFH of 1 per Table 15-7, page 406. He assigned a GMPE of 1 pursuant to Table 15-8, page 408. Dr. Nadar assigned a GMCS of 1 pursuant to Table 15-9, page 410. He utilized the net adjustment formula (1 - 1) + (1 - 1) + (1-1) = zero, which resulted in a grade C or six percent permanent impairment of the right middle finger.

the right upper extremity pursuant to Table 15-12, page 422. Dr. Nadar concluded that the ROM methodology yielded the greater impairment.

In accordance with its procedures, OWCP properly routed the case record to its DMA who concurred with Dr. Nadar's five percent permanent impairment of the right upper extremity finding for the right middle finger based upon the ROM methodology and opined that it represented the greater right upper extremity impairment.

The Board has reviewed Dr. Nadar's ROM impairment rating for the right middle finger under Table 15-34, page 475 of the A.M.A., *Guides* and concurs that appellant has five percent permanent impairment of the right upper extremity based upon the ROM methodology. Pursuant to Figure 15-13, page 462 and Table 15-31, page 470, Dr. Nadar found 10 percent permanent impairment for flexion of the DIP joint at 60 degrees, 21 percent permanent impairment for flexion of the PIP joint at 70 degrees, and zero percent permanent impairment for flexion of the MCP joint at 15 to 90 degrees. He combined these values pursuant to the Combined Values Chart on page 604 to equal 29 percent permanent impairment for the digit converted to 6 percent permanent impairment of the hand and 5 percent impairment for the right upper extremity pursuant to Table 15-12, page 422. Appellant's right upper extremity permanent impairment under the ROM methodology therefore totals five percent.

There is no other current medical evidence in conformance with the sixth edition of the A.M.A., *Guides* establishing greater than five percent permanent impairment of the right upper extremity. Accordingly, appellant has not met his burden of proof to establish greater than five percent permanent impairment of his right upper extremity, 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 met his burden of proof to establish greater than five percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2022
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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