

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

R.M., Appellant)	
)	
and)	Docket No. 23-0788
)	Issued: December 29, 2023
U.S. POSTAL SERVICE, GMF FINANCE POST)	
OFFICE, Denver, CO, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 1, 2023 appellant filed a timely appeal from an April 18, 2023 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 18, 2023 decision, appellant submitted additional evidence to OWCP. 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." 20C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this new evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than six percent permanent impairment of her left middle finger, for which she previously received a schedule award.

FACTUAL HISTORY

On June 1, 2022 appellant, then a 60-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 29, 2022 she sustained an injury to her left middle finger when transferring mail onto a machine while in the performance of duty. She did not immediately stop work. On July 7, 2022 OWCP accepted appellant's claim for mallet finger of left middle finger.

On December 28, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support of her claim, appellant provided a November 3, 2022 report from Dr. Theodore Villavicencio, a Board-certified family practitioner. Dr. Villavicencio reported her date of injury as April 29, 2022, and diagnosed mallet deformity of the left middle finger. On physical examination he found limited range of motion (ROM) in the proximal interphalangeal (PIP) joint and the distal interphalangeal (DIP) joint and tenderness to palpation at the tip. Dr. Villavicencio opined that appellant reached maximum medical improvement (MMI) on November 3, 2022.

In a development letter dated December 28, 2022, OWCP informed appellant of the deficiencies of her schedule award claim. It advised her of the type of medical evidence necessary to establish her claim and provided 30 days for her to submit the requested evidence.

In a January 18, 2023 report, Dr. Eric Chau, a Board-certified family practitioner, diagnosed mallet deformity of the left middle finger. He noted limited ROM in the PIP joint and DIP joint and tenderness to palpation at the tip. Dr. Chau opined that appellant reached MMI on November 3, 2022.

By decision dated February 1, 2023, OWCP denied appellant's schedule award claim. It found that the medical evidence of record was insufficient to establish that she had reached MMI and therefore she did not meet the requirements for entitlement to a schedule award.

On February 17, 2023 appellant requested reconsideration.

In support of her request, appellant submitted an impairment rating from Dr. Villavicencio dated November 3, 2022. Dr. Villavicencio referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 15-2 (Digit Regional Grid), page 393, the class of diagnosis (CDX) for distal phalanx fracture was a Class 1 impairment, grade C, with a default value of four percent for the digit. He assigned a grade modifier for

³ A.M.A., *Guides* (6th ed. 2009).

functional history (GMFH) of 1 based on mildly limited functional status per Table 15-7, page 406. Dr. Villavicencio assigned a grade modifier for physical examination (GMPE) of 2 due-to-moderate decreased ROM of the DIP joint, pursuant to Table 15-8, page 408. He assigned a grade modifier for clinical studies (GMCS) of 2 for associated fracture of the distal phalanx that could be pinned pursuant to Table 15-9, page 410. Dr. Villavicencio utilized the net adjustment formula $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (2 - 1) + (2 - 1) = +2$, which resulted in a grade E or six percent permanent impairment of the left middle finger, which he converted to one percent permanent impairment of the left hand and one percent impairment of the left upper extremity, pursuant to Table 15-12, page 421. With regard to the ROM rating method, he noted middle finger DIP flexion of 50 degrees for 10 percent digit impairment and extension of 30 degrees for 12 percent digit impairment for a total 22 percent DIP middle digit impairment. Dr. Villavicencio noted middle finger PIP flexion of 90 degrees for six percent digit impairment and extension of 10 degrees for three percent digit impairment for a total of nine percent PIP middle digit impairment. He combined the ROM middle digit impairment for 30 percent permanent impairment. Using Table 15-12 of the A.M.A., *Guides*, Dr. Villavicencio calculated six percent impairment of the hand and five percent impairment of the left upper extremity. He noted the ROM rating method provided the greater impairment rating.

On April 7, 2023 Dr. David J. Slutsky, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA), reviewed a statement of accepted facts and the medical record, including Dr. Villavicencio's November 3, 2022 report. He disagreed with his findings. Dr. Slutsky utilized the DBI rating method to find that, under Table 15-2 (Digit Regional Grid), page 392, the appropriate CDX was an extensor tendon rupture resulting in mallet finger a, Class 1 impairment, grade C, with a default value of six percent for the digit. He assigned a GMFH of 1, a GMPE of 1, and a GMCS of 1. Dr. Slutsky utilized the net adjustment formula $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (1 - 1) = 0$, which resulted in a grade C or six percent permanent impairment of the left middle finger. He advised that the medical evidence of record was insufficient to render an impairment rating under the ROM rating method because the medical record did not contain three independent ROM measurements of each arc with the greatest ROM used for the determination of impairment. Dr. Slutsky explained that a complete arc of motion was not supplied in all planes for which impairment may be rated per the ROM impairment table. He concluded that MMI was reached on November 3, 2022 the date of Dr. Villavicencio's impairment evaluation.

By decision dated April 18, 2023, OWCP vacated its February 1, 2023 decision. It noted that the medical evidence demonstrated six percent permanent impairment of the left middle finger as a result of her accepted April 29, 2023 employment injury. OWCP noted that a separate award decision would be issued.

By separate decision also dated April 18, 2023, OWCP granted appellant a schedule award for six percent permanent impairment of her left middle finger. The award ran for 1.8 weeks from April 8 through 20, 2023 and was based on Dr. Villavicencio's November 3, 2022 report and Dr. Slutsky's April 7, 2023 DMA report.

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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.⁶ 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

In addressing upper extremity impairments, the sixth edition requires that the evaluator identify the impairment CDX, which is then adjusted by a GMFH, GMPE, and GMCS.⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰

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.¹¹ 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.¹² 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.¹³

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.¹⁴ Regarding the application of

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* See also *B.B.*, Docket No. 20-1187 (issued November 18, 2021); *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), *id.* at Chapter 2.808.5a. (March 2017).

⁸ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁹ A.M.A., *Guides* 383-492.

¹⁰ *Id.* at 411.

¹¹ *Id.* at 461.

¹² *Id.* at 473.

¹³ *Id.* at 474.

¹⁴ FECA Bulletin No. 17-06 (issued May 8, 2017).

ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

“As the [A.M.A.] *Guides* caution that, if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the determination of impairment, the CE [claims examiner] should provide this information (*via* the updated instructions noted above) to the rating physician(s).”

“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.)¹⁵

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 [claims examiner].”¹⁶

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.¹⁷

ANALYSIS

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

In his November 3, 2022 report, Dr. Villavicencio provided one set of passive ROM measurements for the left middle finger. OWCP referred his report to Dr. Slutsky, its DMA, who found that appellant had six percent permanent impairment of the left middle finger under the DBI methodology. Dr. Slutsky advised that Dr. Villavicencio’s report did not contain three complete ROM measurements for the left middle finger.

Pursuant to FECA Bulletin No. 17-06, if the ROM method of rating permanent impairment is allowed, after review of the DBI rating, and the ROM findings are incomplete, the DMA should

¹⁵ A.M.A., *Guides* 477.

¹⁶ FECA Bulletin No. 17-06 (issued May 8, 2017); *V.L.*, Docket No. 18-0760 (issued November 13, 2018); *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

¹⁷ *See supra* note 7 at Chapter 2.808.6f. (March 2017); *see D.J.*, Docket No. 19-0352 (issued July 24, 2020).

advise as to the medical evidence necessary to complete the ROM method of rating if the medical evidence of record is insufficient to rate appellant's impairment using ROM.¹⁸

Herein, OWCP did not follow the procedures outlined in FECA Bulletin No. 17-06 after the DMA advised that the measurements for the left middle were incomplete and there was insufficient documentation to rate appellant's permanent impairment utilizing the ROM methodology.¹⁹

On remand OWCP shall obtain the necessary evidence as required under FECA Bulletin No. 17-06 from Dr. Villavicencio.²⁰ After it obtains the evidence necessary to complete the rating as described above, the case shall be referred to a DMA to independently calculate impairment to the left middle finger using both ROM and DBI methods and identify the higher rating.²¹ If Dr. Villavicencio does not fully comply with the A.M.A., *Guides*, OWCP shall refer appellant to a specialist in the appropriate field of medicine for a second opinion evaluation. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁸ *J.L.*, Docket No. 19-1684 (issued November 20, 2020); *R.L.*, Docket No. 19-1793 (issued August 7, 2020); *E.P.*, Docket No. 19-1708 (issued April 15, 2020).

¹⁹ *C.H.*, Docket No. 20-0529 (issued June 16, 2021); *J.L.*, *R.L.*, *id.*; *C.T.*, Docket No. 18-1716 (issued May 16, 2019).

²⁰ *J.L.*, *id.*; *J.S.*, Docket No. 19-0483 (issued October 10, 2019).

²¹ See *J.L.*, *id.*; *J.V.*, Docket No. 18-1052 (issued November 8, 2018); *M.C.*, Docket No. 18-0526 (issued September 11, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2023 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: December 29, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board