United States Department of Labor
Employees' Compensation Appeals Board

T.A., Appellant	)	
and	)	**Docket No. 21-0798**
	)	**Issued: January 31, 2023**
DEPARTMENT OF THE ARMY, ALABAMA NATIONAL GUARD, Florence, AL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 29, 2021 appellant filed a timely appeal from March 5 and 31, 2021 merit decisions 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 over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained additional conditions to his right ankle or forearm as a consequence of his accepted December 2, 2015 employment injury; and (2) whether appellant has met his burden of proof to establish greater than eight percent permanent impairment of the right upper extremity for which he previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On December 3, 2015 appellant, then a 38-year-old automotive mechanic, filed a traumatic injury claim (Form CA-1) alleging that on December 2, 2015 he sustained injuries to his right little finger when his finger became trapped between a cabinet and an engine in the performance of duty. OWCP accepted the claim for laceration of flexor muscle, fascia and tendon of right little finger; laceration without foreign body of right little finger; and right-hand contracture.

The record reflects that appellant underwent a number of authorized surgical procedures for repair of his finger. On December 18, 2015 appellant underwent neurolysis of radial digital and ulnar nerves and repair of flexor digitorum superficials and flexor digtorum profundus of right little finger. On May 20, 2016 he underwent excision of the flexor digitorum superficialis (FDS) tendons and flexor digitorum profundus (FDP) tendons of the little finger and placement of Hunter rod at flexor tendons of the little finger. On October 18, 2016 appellant underwent removal of right little finger hardware, tendon graft to flexor surface of little finger utilizing palmaris longus (right ankle graft). On October 19, 2017 he underwent right small finger tendon reconstruction, tenolysis and proximal interphalangeal (PIP) joint capsulectomy contracture release, which was performed by Dr. Julian Carlo, a Board-certified orthopedic hand surgeon.

Appellant filed a claim for compensation (Form CA-7) on December 11, 2018 for a schedule award.

In a February 8, 2019 report, Dr. Carlo advised that appellant's condition had reached maximum medical improvement (MMI). He also noted that, while additional surgery could benefit appellant in the future, he had currently advised appellant against further surgery. Based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] Dr. Carlo opined that appellant had permanent impairment of the right small finger, which resulted in seven percent permanent impairment of the hand, or six percent permanent impairment of the right upper extremity. He recommended that appellant be referred to another physician if an impairment evaluation based on the sixth edition of the A.M.A., *Guides* was required.[3]

OWCP thereafter referred appellant to Dr. Curt Freudenberger, a Board-certified orthopedic surgeon, for a second opinion permanent impairment evaluation. In a May 13, 2019 report, Dr. Freudenberger reviewed the statement of accepted facts (SOAF) and appellant's medical record. He indicated that appellant had not reached MMI as additional interventions to improve the condition of the right fifth finger would be necessary. Dr. Freudenberger explained that appellant has a flexion contracture with substantial scar tissue and elevation of the flexor tendons in the right small finger that was tender to palpation. He opined that the wasting of the intrinsics was due to disuse or possible injury to the nerve at Guyon's canal. Dr. Freudenberger conducted three measurements for range of motion (ROM), noting that appellant had substantially decreased active and passive ROM. The finger had bowing with a flexion contracture with a near locked ROM. Dr. Freudenberger indicated that the bowing was severe with clear evidence of the

[2] A.M.A., *Guides* (4th ed. 1993).

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

underlying flexor tendon with associated scarring, which is most similar to Dupuytren's flexion contracture. He found, on repeat ROM over three tests, the metacarpophalangeal (MCP) joint flexion was 30 degrees and extension -25 degrees, PIP flexion was 30 degrees and extension -30 degrees in a locked position, and distal interphalangeal (DIP) flexion was 30 degrees and extension -30 degrees in a locked position. Under Table 15-31, Dr. Freudenberger found that the MCP joint had 40 percent impairment, the PIP joint had 50 percent impairment, and the DIP joint had 45 percent impairment. Under Table 15-8, he opined that appellant's ROM of his right little finger joints were all in the severe category, which equated to a Grade 3 modifier. Dr. Freudenberger opined that, under Table 15-12, appellant had 15 percent permanent impairment of the hand, or 13 percent permanent impairment of the right upper extremity.

By decision dated June 20, 2019, OWCP denied the claim for a schedule award as appellant's condition had not reached MMI.

On July 12, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held telephonically on October 24, 2019.

By decision dated January 7, 2020, an OWCP hearing representative vacated OWCP's June 20, 2019 decision and remanded the case to OWCP to have Dr. Freudenberger clarify whether additional surgical interventions were necessary to determine that appellant had reached MMI.

On February 3, 2020 OWCP sought clarification from Dr. Freudenberger as to whether appellant required additional medical or surgical intervention. In an April 6, 2020 response, Dr. Freudenberger opined that appellant was at MMI as he had decided to only pursue conservative management and no further surgical intervention.

Dr. David I. Krohn, a Board-certified internist serving as an OWCP district medical adviser (DMA), evaluated appellant's medical record along with an April 10, 2019 SOAF to determine appellant's entitlement to a schedule award. In a May 24, 2020 report, the DMA reviewed Dr. Freudenberger's May 13, 2019 impairment evaluation and April 6, 2020 addendum report. He opined that MMI was reached on May 13, 2019, the date of Dr. Freudenberger's impairment evaluation, as appellant had decided to forego further surgical procedures. The DMA also noted that Dr. Freudenberger's physical examination of appellant's right little finger revealed flexion contracture of the flexor tendon of the right fifth finger consistent with Dupuytren's contracture, and that the right fifth finger was locked on flexion at the MCP, PIP, and DIP joints. He further opined that appellant had eight percent permanent impairment of his right upper extremity based on the ROM impairment rating methodology found on Table 15-31, page 470 of the sixth edition of the A.M.A., *Guides*. The DMA advised that he utilized the ROM method to assess appellant's permanent impairment because it resulted in a higher rating for the right upper extremity than the

one percent rating[4] obtained under the diagnosis-based impairment (DBI) rating method. He indicated that he understood that each of the joints, which Dr. Freudenberger described as "locked" meant that they were ankylosed. Under Table 15-31, page 470, the DMA indicated that for the MCP joint, a flexion and extension of - 30 degrees (ankylosed) equaled 45 percent digit impairment; for the PIP joint, a flexion and extension of -30 degrees (ankylosed) equaled 60 percent digit impairment; and for the DIP joint, a flexion and extension of -30 degrees (ankylosed) equaled 35 percent permanent impairment. Using the Combined Values Chart on pages 604-05, he found that the combined impairment percentages resulted in 86 percent permanent impairment of the right fifth finger. Under Table 15-12, page 423, a rating of 86 percent impairment of the right fifth finger impairment corresponded to 8 percent permanent impairment of the right upper extremity. The DMA indicated that Dr. Freudenberger's assignment of impairment to each joint of the right fifth finger differed from his assignment. He related that while Dr. Freudenberger had rated appellant's ROM deficit as "severe" Grade 3, appellant's ROM impairment greater than 70 percent qualified for a Grade 4 modifier. The DMA further noted that while Dr. Freudenberger described each joint of the fifth finger as "locked," which essentially defined a joint as ankylosed, it was unclear as to how a MCP flexion of 30 degrees could co-exist with joint extension of -25 degrees, as Dr. Freudenberger had described. He related that in an ankylosed joint flexion and extension should correspond. The DMA also related that he was unable to explain the discrepancy with Dr. Freudenberg's final rating as Dr. Freudenberger had not explained how he used Table 15-12 to arrive at his final rating.

By decision dated June 16, 2020, OWCP granted appellant a schedule award for eight percent permanent impairment of his right upper extremity (arm). The schedule award ran for 24.96 weeks from May 19 through November 9, 2019 and was based on the DMA's report.

In an August 28, 2020 letter, appellant requested that the acceptance of his claim be expanded to include consequential conditions. He explained that Dr. Maddox had removed a tendon from his right ankle, up to his calf, to replace the tendon in his finger; however, the ankle tendon was too short therefore a tendon from his right forearm was also removed. Appellant advised that following the removal of the tendon from his ankle, he had experienced significant pain and discomfort in his foot, and that the tendon removal from his forearm had resulted in weakness.

[4] For a diagnosis-based impairment rating, the DMA opined that Dr. Freudenberger's description of the right fifth finger was consistent with Dupuytren's contracture equated to a digital stenosing tenosynovitis (trigger digit). Under Table 15-2, page 392 of the A.M.A., *Guides*, he assigned a Class 1 default Grade C, which equaled six percent impairment of the involved digital stenosing tenosynovitis (trigger digit). The DMA found that a grade modifier for functional history (GMFH) was not applicable as no symptoms were described in Dr. Freudenberger's report. Under Table 15-8, he opined that appellant had a grade modifier for physical examination (GMPE) of 4 for very severe, decreased range of motion. Under Table 15-9, the DMA opined that appellant had a grade modifier for clinical studies (GMCS) of 2 for moderate pathology. Utilizing the net adjustment formula, he found that appellant had +4 or Grade E impairment, which resulted in eight percent permanent impairment of the right fifth finger. Under Table 15-12 a rating of eight percent permanent impairment of the finger corresponded to one percent permanent impairment of the right upper extremity.

In a January 12, 2021 development letter, OWCP informed appellant of the deficiencies of his claim for expansion. It advised him of the type of medical evidence needed and afforded him 30 days to respond. No further medical evidence was received.

On January 20, 2021 appellant requested reconsideration of OWCP's June 16, 2020 schedule award decision. He requested that OWCP review Dr. Carlo's medical reports and expand the acceptance of his claim to include consequential conditions due to the tendon removal from his right ankle as well as the tendon removal from his forearm. Appellant further requested that OWCP send him to a doctor to develop his consequential claim.

By decision dated March 5, 2021, OWCP denied expansion of the acceptance of appellant's claim to include a consequential injury. It found that the medical evidence of record was insufficient to establish that weakness or impairment caused by the accepted employment conditions led to an aggravation of the original injury or to a new injury.

By decision dated March 31, 2021, OWCP denied modification of its June 16, 2020 schedule award decision.

LEGAL PRECEDENT -- ISSUE 1

The claimant bears the burden of proof to establish a claim for a consequential injury.[5] As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[6]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[8]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that

[5] *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

[6] *K.W.*, Docket No. 18-0991 (issued December 11, 2018).

[7] *G.R.*, Docket No. 18-0735 (issued November 15, 2018).

[8] *Id*.

a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish additional right ankle or forearm conditions as a consequence of his accepted December 2, 2015 employment injury.

In this case, appellant underwent four surgical procedures as a result of his accepted employment injury. This included the first stage of a two-stage tendon graft on May 20, 2016 and the second stage of the flexor tendon graft on October 18, 2016. Appellant has requested that his claim be expanded to include consequential conditions, which he claims resulted from the removal of tendons from his right ankle and forearm during his OWCP-authorized surgery. In a January 12, 2021 letter, OWCP requested that he identify the diagnosed conditions he requested be accepted as consequential to his employment injury, and that he provide medical evidence from his treating physician, which explained with medical rationale how the claimed conditions were causally related to the December 2, 2015 employment injury. Appellant, however, did not submit any medical evidence which explained how any additional diagnosed conditions were causally related to his accepted employment injury. As the medical evidence of record does not establish that any additional conditions were causally related to appellant's accepted employment injury, the Board finds that he has not met his burden of proof.[10]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provisions 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.[11] 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.[12] Commencing May 1, 2009, schedule awards are

[9] *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

[10] *See T.T.*, Docket No. 19-0319 (issued October 26, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[12] *Id.* at § 10.404; *L.T.*, Docket No. 18-1031 (issued March 5, 2019); *see also Ronald R. Kraynak*, 53 ECAB 130 (2001).

determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[13] 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.[14]

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.[15] 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.)[16]

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."[17]

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[18] extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of 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.[19]

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[13] *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).

[14] *D.C.*, Docket No. 20-1655 (issued August 9, 2021); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

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

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

[17] *Supra* note 15; *V.L.*, Docket No. 18-0760 (issued November 13, 2018); *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

[18] 5 U.S.C. § 8107.

[19] *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 13 at Chapter 2.808.5e (March 2017).

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 OWCP's medical adviser providing rationale for the percentage of impairment specified.[20]

OWCP's procedures further provide: "if there was a second opinion examination, and the DMA provides a detailed and rationalized opinion in accordance with the A.M.A., *Guides,* but does not concur with the second opinion physician's impairment rating the [claims examiner] CE should seek clarification or a supplemental report from the second opinion examiner. After receiving clarification, the CE should refer the case back to the DMA for review."[21]

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision with regard to appellant's schedule award claim.

OWCP subsequently referred appellant to Dr. Freudenberger for a second opinion examination. Dr. Freudenberger provided a permanent impairment evaluation in his May 13, 2019 report and clarified that appellant had reached MMI in an April 6, 2020 addendum report. In his May 13, 2019 report, he reviewed appellant's medical records and noted findings based upon appellant's physical examination. Dr. Freudenberger referenced the sixth edition of the A.M.A., *Guides,* including Table 15-31 for rating permanent impairment due to loss of finger ROM. He opined that appellant had 13 percent right upper extremity impairment based on ROM methodology for MCP joint 40 percent impairment, PIP joint 50 percent impairment, and DIP joint 45 percent impairment. The Board notes, however, that the percentages of permanent impairment Dr. Freudenberger assigned under Table 15-31 do not transparently correspond to the values provided under Table 15-31. Dr. Freudenberger did not sufficiently explain how he reached each impairment rating for the MCP, PIP, and DIP joints under Table 15-31, given the values presented in Table 15-31.

In a May 24, 2020 report, the DMA reviewed Dr. Freudenberger's May 13, 2019 impairment evaluation and April 6, 2020 addendum report. He agreed that appellant would be entitled to a greater schedule award utilizing the ROM methodology. The DMA disagreed with Dr. Freudenberger's application of the ROM measurements for the MCP, PIP, and DIP joints under Table 15-31 noting that Dr. Freudenberger had not provided an explanation for his findings.

The Board notes that ROM rating under Table 15-31 for the little finger joints is dependent upon whether the ROM degree is negative or positive. Dr. Freudenberger indicated that the MCP joint was in the "near locked position" with 30 degrees of flexion and -25 degrees of extension for a finger impairment of 40 percent. The DMA noted these findings and related that while Dr. Freudenberger described each joint of the fifth finger as "locked," which essentially defined a joint as ankylosed, it was unclear how a MCP flexion of 30 degrees could co-exist with joint extension of -25 degrees as Dr. Freudenberger had described. He related that in an ankylosed joint,

[20] *See supra* note 13 at Chapter 2.808.6f (March 2017); *see D.J.*, Docket No. 19-0352 (issued July 24, 2020).

[21] *Supra* note 13 at Chapter 2.808.6e (March 2017); *C.C.*, Docket No. 19-0467 (issued August 7, 2019).

flexion and extension should correspond. The DMA also related that he was unable to explain Dr. Freudenberg's final rating as he had not explained how he used Table 15-12. As he was unable to fully explain Dr. Freudenberger's findings and why his ratings of appellant's permanent impairment differed from Dr. Freudenberger's, OWCP should have requested further clarification from Dr. Freudenberger.

The case must therefore be remanded for OWCP to obtain a supplemental report from Dr. Freudenberger explaining his ROM rating of appellant's right upper extremity permanent impairment.[22] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained additional conditions to his right ankle or forearm as a consequence of his accepted December 2, 2015 employment injury. The Board further finds that the case is not in posture for decision as to whether he has greater than eight percent permanent impairment of his right upper extremity for which he previously received a schedule award.

[22] *C.C., id.*

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed. The March 31, 2021 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: January 31, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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