United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 23-0130**
	)	**Issued: July 17, 2023**
DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND, Norfolk, VA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 7, 2022 appellant, through counsel, filed a timely appeal from an October 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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] 5 U.S.C. § 8101 *et seq*.

ISSUE

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

FACTUAL HISTORY

On October 2, 2019 appellant, then a 39-year-old carpenter, filed a traumatic injury claim (Form CA-1) alleging that on September 23, 2019 he cut his left thumb down to the bone when cutting carpet with a razor knife while in the performance of duty. He did not stop work. OWCP accepted the claim for a displaced fracture of the distal phalanx of the left thumb. On September 25, 2019 appellant underwent an OWCP-authorized debridement of an open fracture of the left thumb distal phalanx with nail bed and wound repair. On October 11, 2019 he underwent an incision and drainage of a wound infection of the left thumb.

On October 1, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In an impairment evaluation dated October 6, 2020, Dr. Neil Allen, a Board-certified internist and neurologist, discussed appellant's current symptoms of pain, numbness, and tingling in the left thumb with reduced flexion. On examination he found full muscle strength, tenderness of the distal proximal interphalangeal (PIP) joint, and reduced sensation of the distal phalanx of the left thumb. Dr. Allen measured range of motion (ROM) of the left wrist three times, finding a maximum flexion of 75 degrees, extension of 81 degrees, radial deviation of 31 degrees, and ulnar deviation of 45 degrees.[3] He further measured ROM of the right and left thumbs. Dr. Allen provided three measurements for the left thumb. He found a maximum flexion of the interphalangeal (IP) joint of 75 degrees, extension of the IP joint of 11 degrees, flexion of the metacarpophalangeal (MCP) joint of 63 degrees, extension of the MCP joint of 15 degrees, abduction of the carpometacarpal (CMC) joint of 2 centimeters, radial abduction of the CMC joint of 97 degrees, and opposition of the CMC joint of 6.5 centimeters.[4] Using the diagnosis-based impairment (DBI) method, Dr. Allen identified the class of diagnosis (CDX) as 1 for a distal phalanx fracture according to Table 15-2 on page 393 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[5] He reviewed x-rays of the left hand from September 25, 2019 showing a fracture through the ulnar distal tip of the distal phalanx of the thumb. Dr. Allen applied a grade modifier for functional history (GMFH) of two based on appellant's *Quick*DASH score of 36 and a grade modifier for physical examination (GMPE) of one due to mild loss of motion of one percent and mild palpatory findings. He found that a grade modifier for clinical studies (GMCS) was not applicable as it was used in class placement. Dr. Allen applied the net adjustment formula to find an increase of one place from the

[3] The ROM measurements of the left wrist yielded no impairment pursuant to Table 15-32 on page 473.

[4] Under Table 15-30 on page 468, 75 degrees flexion of the IP joint yielded 1 percent impairment. The remaining ROM measurements yielded no impairment. The ROM measurement for appellant's unaffected right thumb also yielded a one percent impairment of the IP joint due to loss of flexion.

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

default value of four percent, for a total impairment of the digit of five percent. He converted the five percent impairment of the digit to two percent impairment of the upper extremity using Table 15-12 on page 421 of the A.M.A., *Guides*.

OWCP referred the case record, along with a statement of accepted facts to a district medical adviser (DMA) for an opinion regarding appellant's schedule award claim. On May 3, 2021 Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as the DMA, found that appellant had no impairment using the ROM method as his ROM was symmetrical on both sides. He concurred with Dr. Allen's finding of five percent permanent impairment of the left thumb using the DBI method. Dr. Hammel found that appellant had reached maximum medical improvement (MMI) on October 6, 2020.

By decision dated August 12, 2021, OWCP granted appellant a schedule award for five percent permanent impairment of the left digit/thumb. The period of the award ran for 3.75 weeks from October 6 to November 1, 2020.

On August 18, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on December 8, 2021. Counsel contended that appellant's impairment to the thumb, an oppositional digit, affected his entire arm. She maintained that he was entitled to an award for two percent permanent impairment of the upper extremity instead of five percent permanent impairment of the thumb.

By decision dated February 22, 2022, OWCP's hearing representative set aside the August 12, 2021 decision. She remanded the case for the DMA to explain whether the five percent permanent impairment of the thumb should be converted to two percent permanent impairment of the left upper extremity.

On April 6, 2022 Dr. Hammel again found five percent permanent impairment of the left thumb. He discussed appellant's complaints of numbness and tingling in the left thumb with mild motion loss and full strength. Dr. Hammel opined that the A.M.A., *Guides* at 390 provided that a digit impairment should remain a digit impairment absent the involvement of multiple digits, and that a digit impairment was only changed to an upper extremity impairment if required prior to conversion to whole person impairment.

By decision dated April 20, 2022, OWCP denied appellant's claim for an increased schedule award, finding that he had no more than the five percent permanent impairment of the left thumb previously awarded.

On April 26, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on August 8, 2022.

By decision dated October 25, 2022, OWCP's hearing representative affirmed the April 20, 2022 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA,[6] and its implementing federal regulation,[7] 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. 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.[8] 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.[9]

In addressing upper extremity impairments, the sixth edition of the A.M.A., *Guides* requires identification of the impairment CDX condition, which is then adjusted by a GMFH, GMPE, and GMCS.[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11]

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.[12] 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.[13] 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.[14]

[6] *Supra* note 2.

[7] 20 C.F.R. § 10.404.

[8] 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 Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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

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

[11] *Id.* at 411.

[12] *Id.* at 461.

[13] *Id.* at 473.

[14] *Id.* at 474.

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology *versus* the ROM methodology for rating 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 [claims examiner] CE."[17]

OWCP's procedures provide, "In general, loss of less than one digit should be computed in terms of impairment to the digit itself (thumb, finger, *etc*.), and loss of two or more digits should be computed in terms of impairment to the whole hand or foot. Where the residuals of an injury to a member of the body specified in the schedule 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 a leg, the schedule award should be made based on the percentage loss of use of the larger member."[18]

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.[19]

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

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

[17] 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).

[18] *Supra* note 8 at Chapter 2.808.5e (March 2017); *see C.W.*, Docket No. 17-0791 (issued December 14, 2018); *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983).

[19] *Supra* note 8 at Chapter 2.808.6(f) (March 2017); *see D.J.*, Docket No. 19-0352 (issued July 24, 2020).

ANALYSIS

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

In an impairment evaluation dated October 6, 2020, Dr. Allen reviewed appellant's complaints of pain and numbness in the thumb with reduced flexion. On examination he found some tenderness and reduced sensation of the thumb with full muscle strength. Dr. Allen measured ROM of the left wrist, which yielded normal findings, and ROM of the left thumb, which showed a mild loss of flexion of the IP joint symmetrical with the loss on the right side. Using the DBI impairment method, he identified the CDX as 1 for distal phalanx fracture, which yielded a default impairment of four percent under Table 15-2 on page 393 of the A.M.A., *Guides*. Dr. Allen found a GMFH of 2, and GMPE of 1, and that a GMCS was inapplicable. He applied the net adjustment formula to find a total impairment of the left thumb of five percent.[20] Dr. Allen converted the five percent permanent impairment of the thumb to two percent permanent impairment of the left upper extremity. He did not, however, explain why appellant's thumb impairment extended into the upper extremity. The Board has held that a medical report is of limited probative value on a given medical matter if it contains a conclusion regarding that matter which is unsupported by medical rationale.[21]

On May 3, 2021 Dr. Hammel concurred with Dr. Allen's finding of five percent permanent impairment of the left thumb. In an April 6, 2022 report, he reiterated that appellant had no more than five percent permanent impairment of the left thumb. Dr. Hammel noted that the A.M.A., *Guides* provided that a digit impairment should remain a digit impairment absent involvement of multiple digits or if it required prior to conversion to a whole person impairment.[22] The Board finds that his report constitutes the weight of the evidence and establishes that appellant has no more than five percent permanent impairment of the left thumb.

As the medical evidence of record does not contain a rationalized impairment rating supporting greater than the five percent permanent impairment of the left thumb previously awarded, the Board finds that appellant has not met his burden of proof.

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 permanent impairment.

[20] Utilizing the net adjustment formula discussed above, (GMFH-CDX) + (GMPE-CDX), or (2-1) + (1-1) = 1, yielded a net adjustment of 1.

[21] *See L.J.*, Docket No. 22-0584 (issued August 15, 2022); *D.H.*, Docket No. 17-0530 (issued July 2, 2018).

[22] A.M.A., *Guides* 390.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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