United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 23-0500**
	)	**Issued: November 22, 2023**
U.S. POSTAL SERVICE, MAR VISTA POST OFFICE, Los Angeles, CA, Employer	)	

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 February 17, 2023 appellant filed a timely appeal from a December 9, 2022 merit decision of the Office of Workers' Compensation Programs. 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.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the December 9, 2022 decision, OWCP received additional evidence. 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." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than four percent permanent impairment of the right hand, for which she previously received a schedule award.

FACTUAL HISTORY

On September 2, 2017 appellant, then a 37-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 21, 2017 she sustained a broken or fractured little finger when she jammed it on a metal piece inside a metal lever while in the performance of duty. She stopped work on September 5, 2017. Initially, on September 28, 2017 OWCP accepted the claim for displaced closed fracture of the distal phalanx of the right little finger. On October 12, 2017 appellant underwent OWCP-authorized closed reduction percutaneous pinning (CRPP) to treat her right small finger dislocation of the distal interphalangeal (DIP) joint dislocation and distal phalanx fracture. OWCP paid her wage-loss compensation on the supplemental rolls for the period October 7 through 14, 2017, and paid her on the periodic rolls, effective October 15, 2017. Subsequently, on February 5, 2018 it expanded the acceptance of the claim to include DIP joint of the right little finger.[3] Appellant returned to work in a light-duty capacity on January 14, 2019. On April 26, 2022 OWCP again expanded the acceptance of the claim to include complex regional pain syndrome (CRPS) of the right upper limb.

On April 20, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated April 26, 2022, OWCP requested that she submit a medical report from her treating physician addressing whether she had reached maximum medical improvement (MMI) and rating any employment-related impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[4] OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated April 13, 2022, Dr. Anthony Ahn, a Board-certified hand surgeon, examined appellant and provided assessments of small finger distal phalanx fracture and CRPS Type 1 of the right upper limb with no direct nerve injury. He referred to the fifth edition of the A.M.A., *Guides*[5] and determined that she had 18 percent whole person permanent impairment.

On August 29, 2022 OWCP referred appellant, along with the case record, and a statement of accepted facts (SOAF) to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion impairment evaluation.

[3] OWCP identified the accepted condition as dislocation of the DIP joint of the left little finger. The Board notes, however, that the record indicates that dislocation of the DIP joint of the right little finger is the accepted condition and reference to dislocation of the DIP joint of the left little finger constitutes harmless error.

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

[5] A.M.A., *Guides* (5th ed. 2001).

In a report dated September 22, 2022, Dr. Einbund reviewed the SOAF and medical record. Examination of the right small finger revealed diffuse tenderness with restricted active range of motion (ROM). Dr. Einbund reported three sets of ROM measurements. He reported findings of metacarpophalangeal (MP) extension 0/0/0 degrees, MP flexion 90/90/90 degrees, proximal interphalangeal (PIP) extension 0/0/0 degrees, PIP flexion 90/90/90 degrees, DIP extension 0/0/0 degrees, and DIP flexion 0/0/0 degrees. Dr. Einbund noted the diagnosed accepted conditions of displaced fracture of the distal phalanx of the right small finger, dislocation of the DIP joint of the right small finger, and complex regional pain syndrome. He found that MMI was reached on the date of his impairment evaluation. Utilizing the ROM rating method of the sixth edition of the A.M.A., *Guides*, Dr. Einbund referred to Table 15-31, page 470 finding that for finger ankylosis of the DIP joint within the range of +10 to -10, equaled 35 percent digit impairment. He then assigned a grade modifier of 2 for the 35 percent digit impairment, pursuant to Table 15-35, page 477. Dr. Einbund assigned a grade modifier functional history (GMFH) of 3 based on a *Quick*DASH score of 63, pursuant to Table 15-7, page 406. He referred to Table 15-36, page 477 and explained that, since the GMFH was one grade higher than the ROM score, appellant's total impairment was increased by 5 percent or 1.75 rounded up to 2 percent for a total permanent impairment of 37 percent of the right digit. Dr. Einbund then converted the 37 percent impairment of the digit to 3 percent impairment of the right upper extremity using Table 15-12, page 421. He concluded that appellant had three percent permanent impairment of the right upper extremity.

On October 14, 2022 OWCP routed the case record and a SOAF to Dr. James W. Butler, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA). In a report dated November 7, 2022, Dr. Butler reviewed the SOAF and medical record, including the September 22, 2022 report of Dr. Einbund. He opined that MMI was reached on September 22, 2022 the date of Dr. Einbund's impairment evaluation. The DMA concurred with Dr. Einbund's 37 percent small finger permanent impairment which converted to 4 percent right hand permanent impairment and 3 percent right upper extremity permanent impairment rating based on the ROM method of the sixth edition of the A.M.A., *Guides*. He provided impairment calculations that mirrored those of Dr. Einbund. The DMA explained that ROM method of rating produced a higher impairment rating for the right small digit than would be calculated under the diagnosis-based impairment (DBI) method. He indicated that the maximum impairment for fracture/dislocation of the DIP joint was seven percent digit permanent impairment because no instability was noted. The DMA advised that, since the DIP joint was ankylosed, the ROM method was the most appropriate under the circumstances.

By decision dated December 9, 2022, OWCP granted appellant a schedule award for four percent permanent impairment of the right hand. The period of the award ran for 9.76 weeks from September 22 through November 29, 2022.

LEGAL PRECEDENT

The schedule award provisions of FECA,[6] and its implementing federal regulations,[7] set forth the number of weeks of compensation payable to employees sustaining permanent

[6] *Supra* note 1.

[7] 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.[8]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health* (ICF): *A Contemporary Model of Disablement*.[9] Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX), which is then adjusted by GMFH, grade modifier physical examination (GMPE), and grade modifier clinical studies (GMCS).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11] The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.[12]

FECA Bulletin No. 17-06 provides guidance in applying ROM or DBI methodologies in rating permanent impairment of the upper extremities. Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

> "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).[13]
>
> "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.,]*

[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 Award and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id*. at Chapter 3.700, Exhibit 1 (January 2010).

[9] A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

[10] *Id*. at 494-531

[11] *Id*. at 521.

[12] *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[13] FECA Bulletin No. 17-06 (issued May 8, 2017); *S.S.*, Docket No. 22-0032 (issued November 7, 2022).

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.)[14]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than four percent permanent impairment of the right hand, for which she previously received a schedule award.

Appellant submitted an April 13, 2022 report from Dr. Ahn to support her claim for a schedule award. Dr. Ahn based her impairment rating on the fifth edition of the A.M.A., *Guides.* However, his report is of limited probative value because he did not use the sixth edition of the A.M.A., *Guides* as is required under FECA.[16]

OWCP referred appellant to Dr. Einbund for a second opinion impairment evaluation. In his September 22, 2022 report, Dr. Einbund utilized the ROM rating method to determine the extent of appellant's right upper extremity permanent impairment. He provided three ROM measurements of her right small finger and noted that she had ankylosis of the DIP joint. Dr. Einbund determined that, under Table 15-31, Table 15-35, Table 15-7, Table 15-36, and Table 15-12, appellant had 37 percent permanent impairment of the right little finger converted to 4 percent permanent impairment of the hand and 3 percent permanent impairment of the right upper extremity.

In accordance with its procedures,[17] OWCP properly routed the case record to its DMA, Dr. Butler. In his November 7, 2022 report, Dr. Butler concurred with Dr. Einbund's 37 percent small finger permanent impairment which converted to 4 percent right hand permanent impairment and 3 percent right upper extremity permanent impairment rating under the ROM method. He provided proper impairment calculations that mirrored those of Dr. Einbund. The DMA explained that the ROM method of rating produced a higher impairment rating for the right small digit than would be calculated under the DBI method.

[14] *Id*.

[15] *A.C.*, Docket No. 19-1333 (issued January 8, 2020); *B.B.*, Docket No. 18-0782 (issued January 11, 2019); *supra* note 8 at Chapter 2.808.6f (March 2017).

[16] *See A.C.*, Docket No. 22-0118 (issued December 15, 2022); *K.B.*, Docket No. 20-0355 (issued January 26, 2021); *B.T.*, Docket No. 19-1586 (issued May 4, 2020); *L.L.*, Docket No. 19-0855 (issued September 24, 2019); *S.J.*, Docket No. 16-1162 (issued February 8, 2.;017) (a medical opinion not based on the appropriate edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of permanent impairment).

[17] *Id*.

The Board finds that OWCP properly determined that appellant has not established greater than four percent permanent impairment of the right hand based on the clinical findings and reports of Dr. Einbund and Dr. Butler.[18]

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[19] extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, or of a hand into the arm, the schedule award should be made on the basis of the percentage loss of use of the larger member.[20] Appellant's permanent impairment was rated for her permanent impairment of the right little finger. OWCP properly converted appellant's permanent impairment of the little finger to a permanent impairment of the adjoining member, the hand, as residuals of an injury to a member of the body extending into an adjoining area of a member, such as an injury of a finger into the hand, are entitled to a schedule award for the larger member.[21] The Board also notes that conversion of the schedule award to an award for loss of use of the arm would have resulted in a lesser award of 9.36 weeks of compensation.

There is no probative medical evidence of record demonstrating greater impairment than that previously awarded.[22]

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than four percent permanent impairment of the right hand, for which she previously received a schedule award.

[18] *S.S.*, *supra* note 13.

[19] 5 U.S.C. § 8107. Pursuant to this section of FECA total impairment of an arm is entitled to 312 weeks of compensation, a hand is entitled to 244 weeks of compensation, while total permanent impairment of the fourth finger is entitled to 15 weeks of compensation. This schedule would grant 4.05 weeks of compensation for 37 percent permanent impairment of the finger and 9.76 weeks of compensation for 4 percent permanent impairment of the hand, and 9.36 weeks of compensation of the arm.

[20] *See T.A.*, Docket No. 21-0798 (issued January 31, 2023).

[21] *Id*.

[22] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2023
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