United States Department of Labor
Employees' Compensation Appeals Board

J.V., Appellant	)	
and	)	**Docket No. 22-0139**
	)	**Issued: February 14, 2024**
DEPARTMENT OF VETERANS AFFAIRS, MENLO PARK VA MEDICAL CENTER, Menlo Park, CA, 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
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 1, 2021 appellant filed a timely appeal from a September 3, 2021 merit decision 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 26 percent permanent impairment of his left thumb for which he has previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 17, 2016 appellant, then a 49-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on September 22, 2016 he injured his left thumb when a wrench slipped as he was tightening a back flow preventer while in the performance of duty. He did not stop work. OWCP accepted the claim for left thumb sprain. On March 22, 2018 it expanded the acceptance of appellant's claim to include post-traumatic osteoarthritis of the first carpometacarpal joint, left hand and left trigger thumb. OWCP authorized wage-loss compensation on the supplemental rolls beginning June 12, 2018.

On June 12, 2018 appellant underwent an authorized left thumb carpometacarpal (CMC) arthroplasty, excisions of left thumb ganglion cyst, and flexor carpi radialis tendon graft. On November 19, 2019 he underwent an accepted tenolysis of the left extensor pollicis brevis and abductor pollicis longus tendons of the thumb, wrist, and forearm, and removal of suture foreign body.

Appellant returned to full-duty work on February 3, 2020.

In a July 31, 2000 report, appellant's attending physician, Dr. James L. Pertsch, a Board-certified hand surgeon, found that appellant had reached maximum medical improvement (MMI) as of that date. He provided an impairment rating of eight percent permanent impairment of the left upper extremity in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).[2]

On January 7, 2021 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

In a January 11, 2021 development letter, OWCP informed appellant of the deficiencies of his schedule award claim. It advised him of the type of medical evidence needed and afforded him 30 days to provide the necessary evidence.

On June 23, 2021 OWCP referred appellant to Dr. Matthew Chan, Board-certified in occupational medicine, for a second opinion examination and determination of his permanent impairment. In a report dated July 30, 2021, Dr. Chan reported appellant's history of injury and medical treatment. He performed a physical examination and found postsurgical changes of the left thumb with tenderness on the radial aspect of the wrist and over the CMC and interphalangeal (IP) joints. Dr. Chan also reported reduced range of motion (ROM). On the left, appellant's thumb demonstrated 45 degrees of IP flexion, 30 degrees of IP extension, 45 degrees of metacarpophalangeal (MP) flexion, and 40 degrees of MP extension, with 30 degrees of abduction and 1 centimeter of adduction. He found left hand grip strength of 4/5. He diagnosed left thumb trigger finger and left thumb osteoarthritis at the CMC joint, status post arthroplasty.

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

Using the sixth edition of the A.M.A., *Guides*,[3] Dr. Chan found that appellant had reached MMI on July 30, 2021. He applied the diagnosis-based impairment (DBI) estimates of the A.M.A., *Guides*, Table 15-2, page 394 for thumb arthroplasty. Dr. Chan found that the class of diagnosis (CDX) was a Class 3 impairment with a default rating of 30 percent. He determined that appellant's grade modifier for functional history (GMFH) was 1 due to his mild problems in accordance with Table 15-7, page 406, and he found grade modifier for physical examination (GMPE) of 2 due to tenderness along the radial aspect of the left wrist and over the thumb joints with reduced ROM, Table 15-8, page 408. Dr. Chan found that grade modifier for clinical studies (GMCS) Table 15-9, page 410, was not applicable as there were no studies following surgery. He applied the net adjustment formula of the A.M.A., *Guides*, page 411, (GMFH - CDX) + (GMPE - CDX) to reach a net adjustment of -3, a Grade A or 26 percent permanent impairment of the left thumb. Dr. Chan also provided corresponding impairment ratings of 10 percent of the left hand and 9 percent of the left upper extremity in accordance with Table 15-12, page 421, of the A.M.A., *Guides*.

In applying the ROM methodology under the sixth edition of the A.M.A., *Guides*, Dr. Chan applied Table 15-30, page 468, and determined that 45 degrees of flexion of the IP joint was three percent impairment of the digit, that 30 degrees of extension of the IP joint was not a ratable impairment. He found that 45 degrees of flexion of the MP joint was two percent permanent impairment of the digit, and that 40 degrees of extension was not a ratable impairment. Dr. Chan found that 30 degrees of abduction of the CMC joint was five percent impairment of the digit, and that 1 centimeter of adduction was not a ratable impairment. He combined the impairments due to loss of ROM and found 10 percent impairment of the thumb, or 4 percent impairment of the left hand, or 4 percent impairment of the left upper extremity in accordance with Table 15-12, page 421 of the A.M.A., *Guides*. Dr. Chan concluded that the DBI method resulted in the greater rating of nine percent permanent impairment of appellant's left upper extremity.

On August 20, 2021 Dr. Michael M. Katz, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA) reviewed the medical record including Dr. Chan's July 30, 2021 findings. He noted that the accepted conditions were strain of the left thumb, post-traumatic osteoarthritis, trigger thumb, ganglion, and disorders of the tendons of the left wrist. Dr. Katz agreed with Dr. Chan's impairment rating of 26 percent permanent impairment of the left thumb. He found that the GMFH, GMPE, and GMCS were properly assigned according to the parameters set forth in Table 15-7, page 406, Table 15-8, page 408, and Table 15-9, page 410, of the A.M.A., *Guides*. Dr. Katz further applied the ROM methodology and found that, since the DBI calculation of impairment was higher, it provided the appropriate impairment rating.

By decision dated September 3, 2021, OWCP granted appellant a schedule award for 26 percent permanent impairment of his left thumb. The award ran for 19.5 weeks from July 20 through August 14, 2021.

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

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing regulations[5] 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 identification of the impairment CDX condition, 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

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[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id. See also 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:

> "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.[15] I*f 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]

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, 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.[19]

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.[20]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 26 percent permanent impairment of the left thumb, for which he previously received a schedule award.

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

[16] *Supra* note 13.

[17] *Supra* note 14; *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 7 at Chapter 2.808.5(e) (March 2017).

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

In an impairment evaluation dated July 30, 2021, Dr. Chan opined that appellant had 26 percent permanent impairment of his left thumb under the DBI methodology. Under the A.M.A., *Guides*, Table 15-2 (Digit Regional Grid), page 394, the CDX for left thumb arthroplasty resulted in a class 3 impairment, grade C, with a default value of 30 for the digit. Dr. Chan assigned a GMFH of 1 per Table 15-7, page 406. He assigned a GMPE of 2 pursuant to Table 15-8, page 408. Dr. Chan found that GMCS was not applicable as appellant had no studies following his surgery. He utilized the net adjustment formula (1 - 3) + (2 - 3) = -3, which resulted in a grade A or 26 percent permanent impairment of the left thumb.[21] With regard to the ROM impairment methodology,[22] Dr. Chan calculated 10 percent impairment of the thumb. He concluded that the DBI methodology represented the greater left thumb impairment.

On August 20, 2021 Dr. Katz, a Board-certified orthopedic surgeon, concurred with Dr. Chan's July 30, 2021 finding of 26 percent permanent impairment of the left thumb. He evaluated appellant's impairment in accordance with both the ROM and DBI methodologies and found that, as DBI resulted in the greater value, it was more appropriate. The Board finds that Dr. Katz' report constitutes the weight of the evidence and establishes that appellant has no more than 26 percent permanent impairment of the left thumb.

As the medical evidence of record does not contain a rationalized impairment rating supporting greater than the 26 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 26 percent permanent impairment of the left thumb, for which he previously received a schedule award.

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[21] *Supra* note 18.

[22] Under Table 15-30, page 468, Dr. Chan found that 45 degrees of flexion of the IP joint was three percent impairment of the digit, that 30 degrees of extension of the IP joint was not a ratable impairment. He found that 45 degrees of flexion of the MP joint was two percent permanent impairment of the digit, and that 40 degrees of extension was not a ratable impairment. Dr. Chan found that 30 degrees of abduction of the CMC joint was five percent impairment of the digit, and that 1 centimeter of adduction was not a ratable impairment. He combined the impairments due to loss of ROM and found 10 percent impairment of the thumb.

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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