

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

hand when she tripped and fell when delivering mail and caught herself with her left hand outstretched on the cement while in the performance of duty. She stopped work on May 23, 2023. OWCP accepted the claim for nondisplaced fracture of the proximal phalanx of the left little finger and contusion of the left hand. It expanded acceptance of the claim to include nondisplaced fracture of the medial phalanx of the left ring finger and sprain of the left ring finger and sprain of the left wrist and hand. OWCP paid wage-loss compensation on the supplemental rolls commencing May 23, 2023.

In a March 19, 2024 report, Dr. Jeffrey A. Klugman, appellant's treating physician and a Board-certified orthopedic surgeon, found that appellant had reached maximum medical improvement (MMI). He provided range of motion (ROM) measurements of appellant's left small finger as 15 degrees of hyperextension at the metacarpophalangeal (MP) joint to 55 degrees of MP joint flexion, positive 15 degrees of hyperextension of the small finger MP joint to 55 degrees of flexion. Dr. Klugman found that the proximal interphalangeal (PIP) joint had ROM of 45 to 90 degrees. In regard to appellant's ring finger, he found residual thickening around the PIP joint of 10 to 90 degrees of ROM, and 0 to 50 degrees of ROM at the distal interphalangeal (DIP) joint. Dr. Klugman reviewed x-rays and found a healed malunion of the proximal phalanx fracture of the left small finger. He applied the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>2</sup> (A.M.A., *Guides*) and found seven percent permanent impairment of the left hand.

On June 24 and August 11, 2024 appellant filed a claim for a scheduled award (Form CA7).

On August 27, 2024 OWCP referred Dr. Klugman's report and a statement of accepted facts (SOAF) to Dr. David J. Slutsky, a Board-certified orthopedic surgeon, serving as OWCP's district medical adviser (DMA), for review and an opinion regarding appellant's permanent impairment. In his October 1, 2024 report, the DMA found that Dr. Klugman did not perform three validated ROM measurements and that the ROM methodology could not be applied. He applied the sixth edition of the A.M.A., *Guides* and found six percent left small finger impairment in accordance with Table 15-2 (Digit Regional Grid) page 393, for a PIP fracture or one percent permanent impairment of the hand in accordance with Table 15-12 (Impairment Values Calculated from Digit Impairment), page 421. Dr. Slutsky further found six percent digit impairment for the diagnosis of sprain of the left ring finger, Table 15-2, page 392, and converted to one percent permanent hand impairment in accordance with Table 15-12, page 421. He combined these impairments to reach two percent permanent impairment of the left hand.

By decision dated October 4, 2024, OWCP granted appellant a schedule award for two percent permanent impairment of the left upper extremity (left hand). The period of the award ran for four weeks from March 19 to April 22, 2014.

On October 23, 2024 appellant requested reconsideration. She requested a second opinion evaluation in accordance with the sixth edition of the A.M.A., *Guides*.

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<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

On October 24, 2024 OWCP began the process of referring appellant for a second opinion evaluation.

By decision dated October 29, 2024, OWCP denied modification of the October 4, 2024 decision. It related that it was currently processing appellant's request for a second opinion examination.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>3</sup> and its implementing federal regulations,<sup>4</sup> 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

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.<sup>7</sup> 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.)<sup>8</sup>

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the fingers and hand, the relevant portions of the arm for the present case, reference is made to Table 15-2 (Digital Regional Grid) beginning on page 391. After the CDX is determined from the appropriate regional grid (including identification of a default grade value), the net adjustment formula is applied using a GMFH, GMPE, and/or GMCS. The net

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> FECA Bulletin No. 17-06 (issued May 8, 2017).

<sup>8</sup> *Id.*

adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>9</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>10</sup>

The A.M.A., *Guides* also provide that the ROM impairment method is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other diagnosis-based sections are applicable.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

Regarding the application of ROM or DBI 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).”<sup>14</sup>

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>15</sup>

### ANALYSIS

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

In a March 19, 2024 report, Dr. Klugman, appellant’s treating physician, utilized the DBI methodology for rating permanent impairment. OWCP referred Dr. Klugman’s report to the

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<sup>9</sup> See A.M.A., *Guides* (6<sup>th</sup> ed. 2009) 405-12. Table 15-2 also provides that, if motion loss is present for a claimant with certain diagnosed digit conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such an ROM rating stands alone and is not combined with a DBI rating. *Id.* at 394, 468-469.

<sup>10</sup> *Id.* at 23-28.

<sup>11</sup> *Id.* at 461.

<sup>12</sup> *Id.* at 473.

<sup>13</sup> *Id.* at 474.

<sup>14</sup> *Supra* note 7.

<sup>15</sup> See *supra* note 6 at Chapter 2.808.6f (March 2017). See also *B.C.*, Docket No. 21-0702 (issued March 25, 2022); *D.L.*, Docket No. 20-1016 (issued December 8, 2020); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

DMA, Dr. Slutsky.<sup>16</sup> In an October 1, 2024 report, Dr. Slutsky noted that Dr. Klugman improperly applied the fifth edition of the A.M.A., *Guides* and that his report only contained one set of ROM measurements of appellant's digits rather than three measurements and, as such, the ROM measurements were invalid for impairment calculations. He then calculated appellant's permanent impairment based on the DBI of the sixth edition of the A.M.A., *Guides*.

The Board finds that the case record does not contain three sets of ROM measurements necessary to properly evaluate appellant's permanent impairment rating under the ROM method.<sup>17</sup> As noted above, FECA Bulletin No. 17-06 provides detailed instructions for obtaining sufficient evidence to conduct a complete permanent impairment evaluation. However, such instructions were not fully carried out in this case, and therefore further development of the medical evidence is required in accordance with FECA Bulletin No. 17-06.<sup>18</sup>

The Board finds that OWCP did not follow the procedures as outlined in FECA Bulletin No. 17-06 after the DMA advised that the measurements had not been obtained for the left digits to determine appellant's ROM measurements.<sup>19</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>20</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>21</sup>

On remand OWCP shall refer appellant, along with the SOAF and the case record, to a second opinion physician in the appropriate field of medicine consistent with OWCP's procedures. The second opinion physician shall provide three sets of ROM measurements of appellant's digits. The permanent impairment rating provided by the second opinion physician, based on both the

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<sup>16</sup> OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified. See Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.808.6f (March 2017). See *K.W.*, Docket No. 22-0320 (issued July 28, 2022); *K.R.*, Docket No. 21-0247 (issued February 25, 2022); *J.J.*, Docket 18-1615 (issued March 5, 2019); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>17</sup> Section 15.7 of the sixth edition of the A.M.A., *Guides* provides that ROM should be measured after a warmup, in which the individual moves the joint through its maximum ROM at least three times. The ROM examination is then performed by recording the active measurements from three separate ROM efforts and all measurements should fall within 10 degrees of the mean of these three measurements. The maximum observed measurement is used to determine the ROM impairment. A.M.A., *Guides* 464.

<sup>18</sup> See *S.F. (J.F.)*, Docket No. 22-0892 (issued April 3, 2023); *C.R.*, Docket No. 21-1265 (issued March 23, 2022); *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).

<sup>19</sup> *Supra* note 14.

<sup>20</sup> See *D.C.*, Docket Nos. 22-0020 and 22-0279 (issued April 25, 2023); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>21</sup> *Id.*; see also *S.A.*, Docket No. 18-1024 (issued March 12, 2020).

DBI and ROM methodologies, shall then be referred to a DMA for review. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 4 and 29, 2024 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 13, 2025  
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