

FACTUAL HISTORY

This is the third appeal in this case.¹ By decision dated November 6, 2007, the Board set aside a November 6, 2006 Office decision and remanded the case for further development of the medical evidence. By decision dated September 14, 2005, the Board set aside a February 9, 2005 Office decision and remanded the case for further development of the medical evidence. The facts and the law of the case contained in the Board's prior decisions are incorporated herein by reference.

On December 5, 2007 the Office referred appellant, together with a statement of accepted facts, a list of questions and copies of medical evidence, to Dr. Steven J. Valentino, a Board-certified osteopathic physician specializing in orthopedic surgery, for an impairment rating of her right hand.

In a January 9, 2008 report, Dr. Valentino reviewed appellant's medical history and provided findings on physical examination. He stated that she had a history of trigger fingers on the right involving the third, fourth and fifth fingers (middle, ring and little fingers) which were surgically released.² Dr. Valentino diagnosed resolved right trigger fingers. Appellant's subjective complaints included right palmar discomfort with repetitive use of her hand, such as when pumping a manual blood pressure cuff. The discomfort lasted a few minutes and dissipated when she rubbed her palm. Appellant stated that she had no triggering or locking of her fingers. On physical examination, she had full range of motion of both upper extremities. There were barely perceptible scars related to appellant's right trigger finger releases that were not hypertrophic. Her skin was normal. Range of motion of the metacarpophalangeal (MP or MCP) joints of the index through little fingers was 0 to 90 degrees. Proximal interphalangeal (PIP) joint range of motion was 0 to 100 degrees. Distal interphalangeal (DIP) range of motion was 0 to 45 degrees.³ Thumb IP joint range of motion was 0 to 80 degrees. Thumb MP range of motion was 0 to 60 degrees.⁴ There was no evidence of ankylosis, triggering or tenosynovitis of the fingers. Allen's, Wright's, Roos', Phalen's, Tinel's, ulnar stretch and grind tests were negative. Neurologic examination revealed intact deep tendon reflexes. Motor and sensory examinations were normal. There were no pathologic reflexes. There was no evidence of weakness. Circumferential measurements of the arms and forearms were symmetric. Dr. Valentino stated that appellant had reached maximum medical improvement which typically would have occurred three to six months after surgery. She had no diminished strength, atrophy,

¹ See Docket No. 05-1388 (issued September 14, 2005); Docket No. 07-1492 (issued November 6, 2007). On August 22, 1988 appellant, then a 56-year-old nursing assistant, sustained trigger finger of her right ring finger when she lifted a bag of laundry. She underwent a trigger finger release of the right ring finger on December 13, 1988. The Office subsequently accepted trigger finger of her right little finger with a surgical release on October 3, 1989.

² The Office has not accepted a middle finger injury in this case.

³ Distal interphalangeal or DIP, refers to the fingers. Interphalangeal, or IP, refers to the thumb. See the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*), fifth edition 454, section 16.4d, and 461, section 16.4e (the thumb has three units: the interphalangeal (IP) joint, MP joint and carpometacarpal (CMC) joint; the fingers have three units: DIP, PIP and MP).

⁴ The Office has not accepted a thumb condition in this case.

ankylosis or sensory changes. There were no subjective complaints causing impairment. Dr. Valentino stated that, because appellant had successful trigger finger releases with restoration of full function and normal clinical findings as to her hand and fingers, her impairment was zero percent.

On February 3, 2008 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and an Office medical adviser, reviewed Dr. Valentino's January 9, 2008 report. He noted that appellant previously received a schedule award for two percent right hand impairment based on Table 16-29 at page 507 (Digit Impairment Due to Constrictive Tenosynovitis) of the fifth edition of the A.M.A., *Guides*.⁵ Dr. Berman noted that Dr. Valentino made no objective or subjective findings to establish persistent constrictive tenosynovitis.

By decision dated February 5, 2008, the Office denied appellant's claim for an additional schedule award. It found that the January 9, 2008 report from Dr. Valentino did not establish greater than two percent impairment of her right hand, for which she received a schedule award.

On February 11, 2008 appellant requested an oral hearing that was held on June 24, 2008. By decision dated August 8, 2008, an Office hearing representative affirmed the February 5, 2008 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁶ and its implementing regulations⁷ 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, the Act 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁸

ANALYSIS

Dr. Valentino reviewed appellant's medical history and provided findings on physical examination. He diagnosed resolved right trigger fingers. There was no evidence of ankylosis, triggering or tenosynovitis of the fingers. Allen's, Wright's, Roos', Phalen's, Tinel's, ulnar stretch and grind tests were negative. Neurologic examination revealed intact deep tendon reflexes. Motor and sensory examinations were normal. There were no pathologic reflexes. There was no evidence of weakness. Appellant had no diminished strength, atrophy, ankylosis or sensory changes. Circumferential measurements of the arms and forearms were symmetric.

⁵ A.M.A., *Guides* (5th ed. 2001).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Supra* note 5.

Dr. Valentino stated that, because appellant had successful trigger finger releases with restoration of full function and normal clinical findings as to her hand and fingers, her impairment was zero percent. He provided range of motion measurements of the index through little fingers, including 0 to 90 degrees of the MP joints. PIP joint range of motion was 0 to 100 degrees. DIP range of motion was 0 to 45 degrees. Although Dr. Valentino stated that physical examination revealed normal clinical findings of appellant's hand and fingers, the A.M.A., *Guides* provides for range of motion impairment based on his measurements. Figure 16-25 at page 464 provides five percent impairment for zero degrees of extension of the MP joint. Figure 16-21 at page 461 provides 15 percent impairment for 40 degrees of flexion of the DIP joint and 10 percent for 50 degrees of flexion. Dr. Valentino measured 45 degrees of flexion of the DIP joint which falls between 10 and 15 percent impairment. However, range of motion impairment cannot be combined with impairment for constrictive tenosynovitis (trigger finger) according to the instructions in section 16.7(c) at page 506 of the A.M.A., *Guides*.⁹ Dr. Berman noted that appellant previously received a schedule award for two percent right hand impairment based on Table 16-29 at page 507 (Digit Impairment Due to Constrictive Tenosynovitis) of the fifth edition of the A.M.A., *Guides*.¹⁰ The Board finds that Dr. Valentino's impairment rating is based on a complete and accurate factual and medical background and a thorough physical examination. Dr. Valentino found no evidence of finger triggering and diagnosed resolved right trigger fingers. He found no weakness, sensory deficit, motor deficit or any other type of impairment related to appellant's accepted trigger finger of the ring and little fingers. Dr. Valentino's report establishes that she has no more than two percent right hand impairment for which she received a schedule award.

On appeal, appellant argues that Dr. Valentino did not mention her 1988 trigger finger release in the medical history. However, Dr. Valentino did reference the 1988 trigger finger release in one part of his report in which he discussed medical history. Appellant argues that Dr. Valentino did not provide range of motion measurements of the shoulders, elbows, wrists or hands. The Office has not accepted an elbow or shoulder injury. Additionally, as noted, impairment due to loss of range of motion cannot be combined with impairment due to constrictive tenosynovitis. Appellant argues that Dr. Valentino did not reference the A.M.A., *Guides*. However, the Office's procedure manual provides that, after all necessary medical evidence is obtained, the file should be routed to an Office 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.¹¹ The Office medical adviser applies the findings of the examining physician to the applicable portions of the A.M.A., *Guides*. Appellant argues that there is a conflict in medical opinion between Dr. David Weiss, an orthopedist, who provided impairment ratings on June 7, 2001 and January 3, 2005, and Dr. Valentino. The Board addressed the reports of Dr. Weiss in its

⁹ Section 16.7c (Musculotendinous Impairments) at page 506 of the A.M.A., *Guides* provides that impairment due to constrictive tenosynovitis, measured by use of Table 16-29 at page 507 and Table 16-18 at page 499, may be combined with other impairments of the digit but not with decreased range of motion.

¹⁰ *Supra* note 5.

¹¹ See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

September 14, 2005 decision and found that they were insufficient to establish appellant's right hand impairment because they were not based on correct application of the A.M.A., *Guides*. Therefore, the argument that there is a conflict in the medical evidence between Dr. Weiss and Dr. Valentino is without merit.

CONCLUSION

The Board finds that appellant has no more than two percent impairment of her right hand for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 8 and February 5, 2008 are affirmed.

Issued: September 8, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board