

**United States Department of Labor  
Employees' Compensation Appeals Board**

B.R., Appellant	)	
	)	
and	)	Docket No. 24-0433
	)	Issued: June 10, 2024
DEPARTMENT OF VETERANS AFFAIRS,	)	
JEFFERSON BARRACKS ST. LOUIS VA	)	
MEDICAL CENTER, St. Louis, MO, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

On March 16, 2024 appellant filed a timely appeal from a December 7, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 24-0433.

On January 23, 2020 appellant, then a 61-year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that his left index finger was amputated on January 22, 2020 when a cable from an auger machine wrapped around his gloved left index finger while in the performance of duty. On January 31, 2020 OWCP accepted his claim for complete traumatic trans-phalangeal amputation of the left index finger.

On April 27, 2020 appellant filed a claim for a schedule award (Form CA-7).

OWCP subsequently received evidence from Dr. Bruce Schlafly, a Board-certified orthopedic hand surgeon, in support of appellant's schedule award claim.

On May 29, 2020 OWCP referred appellant's case, along with a statement of accepted facts (SOAF) and the medical record, to Dr. David Slutsky, a Board-certified orthopedic surgeon serving as the district medical adviser (DMA). Dr. Slutsky opined that after only four months, it was

unlikely that appellant had reached MMI. He recommended that appellant undergo an impairment rating, including validated upper extremity range of motion measurements.

In a January 25, 2021 report, Dr. Schlafly opined that appellant had reached MMI as of that date. On physical examination he observed full extension of the fingers of the left hand. Dr. Schlafly noted 80 degrees of flexion at the proximal joint of the left index finger and 65 degrees of flexion at the middle joint, with full flexion of the other fingers and thumb. Grip strength on the left was measured at 85 pounds, compared to right grip strength of 115 pounds. Referring to Figure 15-12, pages 422 and 458, of the sixth edition A.M.A., *Guides*, Dr. Schlafly calculated 60 percent permanent partial impairment of the left index finger, equivalent to 12 percent impairment of the left hand and 11 percent impairment of the left upper extremity.

In a March 30, 2022 report, Dr. Slutsky advised that appellant had 45 percent digit impairment for a distal interphalangeal (DIP) joint amputation of the left index finger. He explained his disagreement with Dr. Schlafly's impairment rating of 11 percent of the left upper extremity, noting that the January 22, 2020 x-ray demonstrated a transverse amputation through the distal phalanx. Referring to Table 15-29, page 560, Dr. Slutsky noted that this level of amputation resulted in 8 percent permanent impairment. He indicated that a permanent impairment rating using the range of motion (ROM) methodology could not be performed because of a lack of validated upper extremity motion impairments.

In a May 20, 2022 letter, Dr. Schlafly noted that he had reviewed the DMA's March 30, 2022 report. He observed that, while Dr. Slutsky was under the impression that the amputation occurred through the DIP joint of the left index finger, it had actually occurred at the mid-shaft level of the middle phalanx of the left index finger. As such, Dr. Schlafly explained that the impairment rating offered in his January 25, 2021 report was appropriate. With the letter, he enclosed the image of an x-ray of the left hand obtained on January 31, 2020.

In an addendum report dated December 6, 2022, Dr. Slutsky confirmed that the January 31, 2020 x-ray image revealed a transverse amputation through the midshaft of the middle phalanx. Referring to Figure 15-5, page 426, of the sixth edition A.M.A., *Guides*, he revised the permanent partial impairment rating of appellant's left index finger to 60 percent, concurring with Dr. Schlafly's January 25, 2021 impairment rating. Dr. Slutsky again noted that an impairment rating using the ROM methodology could not be performed because of a lack of validated upper extremity motion measurements.

By decision dated March 7, 2023, OWCP granted appellant a schedule award for 60 percent permanent impairment of the left index finger. The award covered a period of 27.6 weeks from January 25 through August 6, 2021.

On March 27, 2023 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated August 16, 2023, OWCP's hearing representative set aside the March 7, 2023 decision and remanded the case for consideration of the medical evidence, to be followed by a *de novo* decision regarding appellant's schedule award claim.

By *de novo* decision dated December 7, 2023, OWCP granted appellant a schedule award for 60 percent permanent impairment of the left index finger. The period of the award ran for 27.6 weeks from January 25 through August 6, 2021.

The Board, having duly considered this matter finds that the case is not in posture for decision.

In January 25, 2021 and May 20, 2022 reports, Dr. Schlafly opined that appellant had reached MMI as of that and calculated 60 percent permanent impairment of the left index finger, utilizing the DBI methodology. He did not provide an impairment rating utilizing ROM methodology. OWCP referred Dr. Schlafly's reports to Dr. Slutzky, the DMA, for review. In his March 30 and December 6, 2022 reports, Dr. Slutzky noted that a permanent impairment rating using the ROM methodology could not be performed because of a lack of validated upper extremity motion measurements.

FECA Bulletin No. 17-06 provides detailed instructions for obtaining sufficient ROM measurements to conduct a complete permanent impairment evaluation. Section 15.7 of the sixth edition of the A.M.A., *Guides* provides that ROM should be measured after a "warm up," 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 means of these three measurements. The maximum observed measurement is used to determine the ROM impairment. As the case record does not contain the ROM measurements necessary to properly evaluate appellant's permanent impairment using the ROM method, further development is required.

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>1</sup> Once it undertakes development of the record, OWCP must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>2</sup>

The case must, therefore, be remanded for further development of the medical evidence. On remand OWCP shall refer appellant, along with an updated SOAF and the medical record, to a physician in the appropriate field of medicine to obtain the necessary ROM measurements and provide an impairment rating with regard to appellant's accepted amputation in accordance with Chapter 15 of the A.M.A., *Guides*.<sup>3</sup> The referral physician shall also explain why his or her rating is based on permanent impairment of the left index finger *versus* permanent impairment of the left

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<sup>1</sup> See *L.L.*, Docket No. 21-0625 (issued January 17, 2023); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

<sup>2</sup> *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

<sup>3</sup> See Table 15-28, page 457; Figure 15-12, page 458; and Table 15-29, page 460.

*versus* permanent impairment of the left upper extremity. Following this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.<sup>4</sup>

**IT IS HEREBY ORDERED THAT** the December 7, 2023 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this order of the Board.

Issued: June 10, 2024  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>4</sup> *F.B.*, Docket No. 18-0903 (issued December 7, 2018); *D.K.*, Docket No. 18-0135 (issued August 20, 2018).