

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

K.D., Appellant)	
)	
and)	Docket No. 24-0591
)	Issued: September 9, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Barre, VT, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 11, 2024 appellant filed a timely appeal from an April 3, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 26 percent permanent impairment of the right thumb, for which she previously received a schedule award.

FACTUAL HISTORY

On August 27, 2020 appellant, then a 57-year-old postal window clerk, filed an occupational disease claim (Form CA-2) alleging that she injured her right thumb due to factors

¹ 5 U.S.C. § 8101 *et seq.*

of her federal employment.² She noted that she first became aware of the condition and its relationship to her federal employment on May 30, 2019. OWCP accepted the claim for an aggravation of right thumb carpometacarpal (CMC) arthritis. Appellant underwent surgery of the right thumb on April 19, 2021, for a basal joint arthroplasty. She stopped work on April 14, 2021 and returned to part-time limited-duty work on June 14, 2021 and to full-time limited-duty work, effective August 23, 2021.

On May 23, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By letter dated July 18, 2022, OWCP advised appellant of the evidence necessary to establish entitlement to a schedule award under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

In a medical report dated October 11, 2022, Dr. Douglas P. Kirkpatrick, a Board-certified orthopedic surgeon, opined that appellant had reached maximum medical improvement (MMI). He noted that she related subjective complaints of pain at the right CMC joint and diminished function and grip. On physical examination of the right hand, Dr. Kirkpatrick observed a well-healed surgical incision around the base of the right thumb, mild foreshortening of the thumb, diminished thenar musculature, and reduced grip strength using a goniometer on the right as compared to the left. Applying the range of motion (ROM) methodology, he found 20 percent permanent impairment of the right thumb. Dr. Kirkpatrick also noted that appellant struggled to touch the base of her middle finger on the right and had a *QuickDASH* score of 51. He diagnosed an aggravation of CMC arthritis of the right thumb with CMC arthroplasty. Dr. Kirkpatrick applied the diagnosis-based impairment (DBI) estimates of the A.M.A., *Guides*,⁴ Table 15-2, page 394, and found 26 percent permanent impairment of the right thumb.

On December 29, 2022 OWCP referred a statement of accepted facts (SOAF)⁵ and the record, including Dr. Kirkpatrick's October 11, 2022 report, to Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as OWCP's DMA, and requested that he evaluate appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a February 3, 2023 report, Dr. Slutsky reviewed Dr. Kirkpatrick's medical report and opined that appellant had reached MMI on October 11, 2022. He applied the DBI estimates of the

² OWCP assigned the present claim OWCP File No. xxxxxx883. Appellant previously filed a December 19, 2008 occupational disease claim alleging injuries to the right upper extremity, which OWCP accepted for right shoulder impingement, right shoulder adhesive capsulitis, and right lateral epicondylitis under OWCP File No. xxxxxx940. It granted her a schedule award of six percent of the right upper extremity based upon a March 29, 2022 evaluation by Dr. Robert Y. Pick, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), under OWCP File No. xxxxxx940. OWCP has not administratively combined OWCP File No. xxxxxx940 with OWCP File No. xxxxxx883.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.*

⁵ In its December 29, 2022 referral letter, OWCP indicated that the accepted conditions were "unilateral primary osteoarthritis of first CMC joint, right hand" and "unspecified sprain of right thumb."

A.M.A., *Guides*, Table 15-2, page 394, for thumb arthroplasty. Dr. Slutsky 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 2 due to her pain with gripping and *QuickDASH* score of 51 in accordance with Table 15-7, page 406, and he found a grade modifier for physical examination (GMPE) of 1 due to minimal tenderness under Table 15-8, page 408. Dr. Slutsky found a grade modifier for clinical studies (GMCS) of 1 based on radiographic findings of joint space narrowing at the thumb CMC joint in accordance with Table 15-9, page 410. He applied the net adjustment formula of the A.M.A., *Guides*, page 411, (GMFH - CDX) + (GMPE - CDX) to reach a net adjustment of -2, and a Grade A or 26 percent permanent impairment of the right thumb. Dr. Slutsky noted that the ROM method for evaluation of impairment resulted in a 12 percent digit impairment. Therefore, he concluded that the DBI method resulted in the greater rating of appellant's right thumb.

On February 7, 2023 OWCP provided Dr. Slutsky with a March 29, 2012 report from Dr. Robert Y. Pick, a Board-certified orthopedic surgeon serving as a DMA, finding that appellant had six percent permanent impairment of the right upper extremity due to right elbow lateral epicondylitis, right shoulder impingement, and right shoulder adhesive capsulitis under OWCP File No. xxxxxx940. It asked that Dr. Slutsky clarify whether the 26 percent right thumb impairment was in addition to the award that appellant had already received for six percent permanent impairment of the right upper extremity.

In a February 28, 2023 amended report, Dr. Slutsky reviewed Dr. Pick's March 29, 2012 report and advised that the 26 percent right digit impairment was in addition to the prior 6 percent right upper extremity impairment.

By decision dated June 15, 2023, OWCP granted appellant a schedule award for 26 percent permanent impairment of her right thumb. The award ran for 19.5 weeks from October 11, 2022 through February 24, 2023, and was based on Dr. Slutsky's February 3 and 28, 2023 reports.

On July 5, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated April 3, 2024, OWCP's hearing representative affirmed the June 15, 2023 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA⁶ 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. OWCP has

⁶ *Supra* note 1.

⁷ 20 C.F.R. § 10.404.

adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.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. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹

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.¹⁰ 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.¹¹ 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.¹²

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.¹³ Regarding the application of 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. *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.)”¹⁴

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

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a. (March 2017); *see also* Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ A.M.A., *Guides* 411.

¹⁰ *Id.* at 461.

¹¹ *Id.* at 473.

¹² *Id.* at 474.

¹³ FECA Bulletin No. 17-06 (issued May 8, 2017).

¹⁴ A.M.A., *Guides* 477.

should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the [claims examiner] CE.”¹⁵

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and extent of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹⁶

ANALYSIS

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

In an impairment evaluation dated October 11, 2022, Dr. Kirkpatrick opined that appellant had 20 percent permanent impairment of her right thumb under the ROM methodology, and 26 percent permanent impairment of her right thumb under the DBI methodology. He applied the A.M.A., *Guides*, Table 15-2 (Digit Regional Grid), page 394, and found the CDX for right thumb arthroplasty resulted in a class 3 impairment, grade C, with a default value of 30 for the digit. Dr. Kirkpatrick assigned grade modifiers and utilized the net adjustment formula, which resulted in a grade A or 26 percent permanent impairment of the right thumb.¹⁷

On February 3, 2023 Dr. Slutsky concurred with Dr. Kirkpatrick’s October 11, 2022 finding of 26 percent permanent impairment of the right thumb. He evaluated appellant’s impairment in accordance with both the ROM and DBI methodologies and determined that, as DBI resulted in the greater value, it was more appropriate. The Board finds that Dr. Slutsky’s report constitutes the weight of the evidence and establishes that appellant has no more than 26 percent permanent impairment of the right thumb.

As the medical evidence of record does not contain a rationalized impairment rating supporting greater than 26 percent permanent impairment of the right thumb previously awarded, the Board finds that appellant has not met her 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.

¹⁵ *Supra* note 12.

¹⁶ *See supra* note 8 at Chapter 2.808.6(f) (March 2017).

¹⁷ *Id.* at Chapter 2.808.6(f) (March 2017); *see D.J.*, Docket No. 19-0352 (issued July 24, 2020).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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