

² The Board notes that appellant has requested oral argument before the Board. Pursuant to 20 C.F.R. § 501.5(a), oral argument may be held in the discretion of the Board. In the present case, the legal issue before the Board is well settled. In the opinion of the Board, oral argument in this appeal would further delay issuance of a Board decision and would not serve a useful purpose. The Board will deny the request for oral argument.

On November 6, 2008 appellant underwent surgery for his left shoulder rotator cuff tear. On December 18, 2009 he filed a claim for an additional schedule award. By decision dated April 20, 2010, appellant was granted a schedule award for seven percent impairment of the left upper extremity utilizing the sixth edition of the A.M.A., *Guides* (2009). The date of maximum medical improvement was noted as December 11, 2009 and the period of the award ran from December 11, 2009 to May 12, 2010. The decision did not address or mention the January 9, 2008 schedule award for a 22 percent impairment of the upper left extremity. Appellant disagreed with the April 20, 2010 OWCP decision and requested an appeal before the Board. The appeal was docketed as No. 10-1530. By decision dated May 6, 2011, the Board remanded the claim to determine whether OWCP found an additional seven percent impairment of the left upper extremity or mistakenly issued a duplicate schedule award. By decision dated August 12, 2011, OWCP found that appellant was not entitled to the schedule award issued for 7 percent impairment under the sixth edition of the A.M.A., *Guides* as the district medical adviser determined that it was not in addition to the 22 percent already received and constituted an overpayment. Thus, it determined that appellant was entitled to 22 percent impairment under the fifth edition rather than the 7 percent impairment he would have been awarded under the sixth edition of the A.M.A., *Guides*, issuing him the more favorable schedule award. Appellant appealed OWCP's decision and by decision dated February 21, 2012, the hearing representative affirmed OWCP's August 12, 2011 decision.

The Board has duly considered the matter and will affirm OWCP's February 21, 2012 decision. Appellant's representative argues that, when appellant filed a claim for an additional schedule award, it should have been adjudicated under the fifth edition of the A.M.A., *Guides* and not the sixth edition which rendered a seven percent schedule award impairment. In support of his argument, he states that both the date of injury and maximum medical improvement predate the May 1, 2009 implementation of the sixth edition of the A.M.A. *Guides*.

In this case, appellant simply made a claim for an increased schedule award. He had no vested right to a schedule award under the fifth edition of the A.M.A., *Guides* for decisions issued after May 1, 2009. In *Harry D. Butler*,³ the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.⁴ On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.⁵ The Bulletin notes, a claimant who has received a schedule award calculated under a previous edition and who claims an increased award, will receive a calculation according to the sixth edition for any decision issued on or after May 1, 2009.⁶ The applicable date of the sixth edition is as of the schedule

³ 43 ECAB 859 (1992).

⁴ *Id.* at 866.

⁵ FECA Bulletin No. 09-03 (issued March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

⁶ 20 C.F.R. § 10.404.

award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed. Accordingly,

IT IS HEREBY ORDERED THAT the February 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board