

open and closed fractures of the left hand middle/proximal phalanxes, left rheumatoid arthritis, left middle finger gangrene and claw hand. Appellant underwent surgery on August 31, 2006, including amputation of the left middle finger at the proximal interphalangeal (PIP) joint. He returned to work on November 5, 2006.

In a report dated May 31, 2007, Dr. Timothy Nice, an orthopedic surgeon, noted that appellant was seen on March 31, 2006. He opined that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter the A.M.A., *Guides*), appellant had a 38 percent whole person impairment. By report dated June 30, 2007, an Office medical adviser found that he had a 28 percent left arm impairment, based on middle finger PIP amputation, and loss of range of motion in the left index, ring and small fingers.

By decision dated September 11, 2007, the Office granted appellant a schedule award for a 28 percent left arm permanent impairment. The period of the award was 87.36 weeks from November 5, 2006.

Appellant requested a review of the written record by an Office hearing representative. By decision dated January 16, 2008, an Office hearing representative affirmed the September 11, 2007 decision.

On September 24, 2009 appellant submitted a claim for compensation (Form CA-7) dated September 23, 2009 for a schedule award. By letter dated October 2, 2009, the Office advised Dr. Nice that impairment determinations must be made under the sixth edition of the A.M.A., *Guides*. It requested that he submit a report based on a recent examination with impairment ratings as determined under the applicable tables of the A.M.A., *Guides*. The Office did not receive a response.

By decision dated November 16, 2009, the Office determined that the medical evidence did not support any additional impairment.

LEGAL PRECEDENT

The schedule award provision of the Act and its implementing regulations² 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.³ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

² 20 C.F.R. § 10.404 (1999).

³ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁴ 20 C.F.R. § 10.404 (1999).

Office procedures provide that, effective May 1, 2009, all schedule awards are to be calculated under the sixth edition of the A.M.A., *Guides*.⁵ Any recalculations of previous awards which result from hearings or reconsideration decisions, issued on or after May 1, 2009, should be based on the sixth edition of the A.M.A., *Guides*. 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

A claimant seeking compensation under the Act has the burden to establish the essential elements of his claim.⁷ With respect to a schedule award, it is appellant's burden of proof to establish an increased schedule award.⁸ A claimant may seek an increased schedule award if the evidence establishes that he sustained an increased impairment causally related to an employment injury.⁹ The medical evidence must include a detailed description of the permanent impairment.¹⁰

ANALYSIS

The Office issued a schedule award for a 28 percent left arm permanent impairment in a decision dated September 11, 2007. This award was based on medical evidence applying the fifth edition of the A.M.A., *Guides*. Appellant filed a claim on September 24, 2009 for an increased schedule award. As noted, any claim for an increased schedule award will be calculated under the sixth edition of the A.M.A., *Guides* for any decision issued after May 1, 2009.

Appellant did not submit any new medical evidence with respect to his claim for an increased award. The Office requested that his attending physician submit a report with an opinion as to permanent impairment under the sixth edition, but there is no indication that Dr. Nice did not respond. The record contains no probative medical evidence with respect to appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*. It is appellant's burden of proof to establish an increased schedule award based on probative medical evidence. The Board finds he did not meet his burden of proof in this case.¹¹

⁵ FECA Bulletin No. 09-03 (March 15, 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010).

⁶ *Id.*

⁷ *John W. Montoya*, 54 ECAB 306 (2003).

⁸ *Edward W. Spohr*, 54 ECAB 806, 810 (2003).

⁹ *See Rose V. Ford*, 55 ECAB 449 (2004).

¹⁰ *See Vanessa Young*, 55 ECAB 575 (2004).

¹¹ Appellant may submit additional evidence, together with a formal written request for reconsideration, to the Office within one year of the Board's merit decision.

CONCLUSION

The Board finds that appellant did not establish more than a 28 percent permanent impairment to his left arm.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2009 is affirmed.

Issued: May 12, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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