

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

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**R.S., Appellant**

**and**

**DEPARTMENT OF THE NAVY, PACIFIC  
FLEET, Bremerton, WA, Employer**

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**Docket No. 11-584  
Issued: September 28, 2011**

*Appearances:*

*John E. Goodwin, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

On January 10, 2011 appellant, through her attorney, sought appeal from a September 8, 2010 decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 11-584.

In a July 17, 2008 decision, OWCP granted appellant a schedule award for a six percent permanent impairment of his right arm.<sup>1</sup> In a September 29, 2008 decision, an OWCP hearing representative found a conflict in the medical evidence and set aside OWCP's July 17, 2008 decision and remanded the case for appellant's referral to an impartial medical specialist. In December 28, 2008 and February 10, 2009 reports, Dr. Lance N. Brigham, a Board- certified orthopedic surgeon and an impartial medical specialist, found that appellant had six percent impairment of his right arm under the standards of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001). In a March 9, 2009 report, an OWCP medical adviser reviewed Dr. Brigham's reports and determined that appellant had five percent impairment of his right arm under the fifth edition of the A.M.A., *Guides*. In a March 19, 2009 decision, OWCP found that appellant had five percent right arm impairment and that he was not entitled to receive additional schedule award compensation.

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<sup>1</sup> OWCP accepted that on May 11, 2006 appellant, then a 50-year-old welder, sustained a sprain/strain and tendinitis of his right rotator cuff and a right frozen shoulder.

OWCP attached appeal rights to the decision, which indicated that appellant had the option to request reconsideration of his claim to the OWCP or to request a review of his claim by the Board.

In a February 12, 2010 order, the Board set aside OWCP's March 19, 2009 decision and remanded the case to OWCP. The Board found that OWCP provided appellant improper appeal rights that did not include the option of requesting a hearing. The Board directed OWCP to issue an appropriate decision with appeal rights that included appellant's right to request a hearing before OWCP. No determination was made regarding the merits of appellant's schedule award claim. Thereafter, OWCP issued a February 25, 2010 decision finding that appellant had no more than five percent impairment of his right arm based on the March 9, 2009 report of its medical adviser. It attached appropriate appeal rights to the decision.

Appellant requested a hearing before an OWCP hearing representative that was held on June 24, 2010. He submitted a July 13, 2010 report in which Dr. Michael S. McManus, an attending Board-certified occupational medicine physician, determined that he had 19 percent right arm impairment under the sixth edition of the A.M.A., *Guides* (6<sup>th</sup> ed. 2009). In a September 8, 2010 decision, an OWCP hearing representative affirmed OWCP's February 25, 2010 decision. She indicated that it was not necessary to evaluate appellant's right arm impairment under the sixth edition of the A.M.A., *Guides*.

For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6<sup>th</sup> ed. 2009) is used for evaluating permanent impairment.<sup>2</sup> 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.<sup>3</sup>

In the present case, appellant received a schedule award for six percent impairment of his right arm and claimed entitlement to an increased schedule award. He submitted a July 13, 2010 report in which Dr. McManus applied the sixth edition of the A.M.A., *Guides*. The Board notes that OWCP issued its September 8, 2010 decision denying appellant's claim for increased impairment after May 1, 2009, the effective date of the sixth edition of the A.M.A., *Guides*, and therefore appellant's claim should have been evaluated under the standards of the sixth edition.<sup>4</sup>

For these reasons, the case will be remanded to OWCP for evaluation of appellant's right arm impairment under the standards of the sixth edition of the A.M.A., *Guides*. After such development as it deems necessary, OWCP shall issue an appropriate decision regarding his right arm impairment.

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<sup>2</sup> See FECA Bulletin No. 09-03 (March 15, 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010).

<sup>3</sup> *Id.*

<sup>4</sup> See *V.P.*, Docket No. 10-1885 (issued May 10, 2011).

**IT IS HEREBY ORDERED THAT** the September 8, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for actions consistent with this order of the Board.

Issued: September 28, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board