

certified orthopedic surgeon.³ In a report dated May 27, 2009, Dr. Fleming found no permanent impairment of the right upper extremity under the fifth edition of the A.M.A., *Guides* (2001). By decision dated June 3, 2009, OWCP denied appellant's claim for a schedule award based on Dr. Fleming's May 27, 2009 report.⁴ Because it neglected to provide a copy of the June 3, 2009 decision to appellant's counsel, OWCP reissued the decision on November 16, 2009. In a decision dated June 1, 2010, the Branch of Hearings & Review affirmed OWCP's November 16, 2009 decision, albeit for a different reason. OWCP's hearing representative did not believe a conflict existed. She also acknowledged that Dr. Fleming applied the fifth edition of the A.M.A., *Guides* rather than the sixth edition, which OWCP adopted effective May 1, 2009. Rather than rely on Dr. Fleming's May 27, 2009 report, the hearing representative found that the DMA's March 20, 2009 right upper extremity impairment rating (10 percent) represented the weight of the medical evidence. The DMA's report was also based on application of the fifth edition of the A.M.A., *Guides*.

The Board finds that the case is not in posture for decision. At the time OWCP and the hearing representative issued their respective decisions, the fifth edition of the A.M.A., *Guides* (2001) was no longer applicable. Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁵ Neither the DMA nor Dr. Fleming based their respective opinions on the sixth edition of the A.M.A., *Guides*. The procedure manual provides that all permanent partial impairment calculations made on or after May 1, 2009 must be based on the sixth edition of the A.M.A., *Guides* (2008).⁶ Both OWCP and the hearing representative erred in basing their respective decisions on medical evidence that applied the outdated fifth edition of the A.M.A., *Guides*.⁷ Accordingly, the case is remanded to OWCP for further medical development followed by a *de novo* decision regarding appellant's entitlement to a schedule award for right upper extremity impairment in accordance with the A.M.A., *Guides* (6th ed. 2008).

³ OWCP selected Dr. Fleming to resolve a conflict in medical opinion between appellant's physician, Dr. David O. Weiss, who found 28 percent impairment of the right upper extremity and the district medical adviser (DMA), Dr. Willie E. Thompson, who found 10 percent right upper extremity impairment.

⁴ Following receipt of Dr. Fleming's May 27, 2009 report, OWCP did not refer the case record to its medical adviser prior to issuing the June 3, 2009 decision.

⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7b(4) (January 2010).

⁷ OWCP further erred by not forwarding Dr. Fleming's May 27, 2009 report to its medical adviser for review. The procedure manual provides that after obtaining all necessary medical evidence, the file should be routed to the DMA for an opinion concerning the nature and percentage of impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6d (October 2004).

IT IS HEREBY ORDERED THAT the June 1, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: August 12, 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