

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

C.E., Appellant)

and)

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Syracuse, NY,
Employer**)

**Docket No. 11-139
Issued: August 12, 2011**

Appearances:
Appellant, pro se
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 October 25, 2010 appellant filed a timely appeal on an Office of Workers' Compensation Programs' (OWCP) merit decision dated July 9, 2010. The record also contains an OWCP decision denying merit review dated August 19, 2010. The appeal was docketed as No. 11-139.

The July 9, 2010 OWCP decision found appellant was not entitled to a schedule award for an increased impairment to his left arm.¹ OWCP indicated that a second opinion physician, Dr. Gregory Shankman, an orthopedic surgeon, had applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and determined that appellant had a 12 percent left arm impairment. In addition, OWCP's medical adviser had provided the same results in a June 23, 2010 report.

Although both Dr. Shankman and OWCP's medical adviser stated that the sixth edition was being applied, it is evident from a review of their reports that their opinions were based on the fifth edition of the A.M.A., *Guides*. The physicians cited page numbers 475-77 and Figures 16-38 to 16-43, and applied the shoulder range of motion results to these figures. The figures cited are from the fifth edition, not the sixth edition. Under the sixth edition, shoulder motion

¹ By decision dated April 14, 2008, OWCP issued a schedule award for a 14 percent permanent impairment to the left arm.

impairments are evaluated under Tables 15-34 to 15-36, as explained under Chapter 15.7(g).² Proper application of Table 15-36, for example, requires a determination of whether a functional history adjustment would be appropriate. Neither of the physicians in this case referred to a functional history adjustment.

It is well established that, effective May 1, 2009, all schedule awards are to be calculated under the sixth edition of the A.M.A., *Guides*.³ 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, 2009.⁴

The case will accordingly be remanded to OWCP for proper evaluation of the schedule award issue presented under the sixth edition of the A.M.A., *Guides*. After such further development as OWCP deems necessary, it should issue an appropriate decision.⁵

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 19 and July 9, 2010 are set aside and the case 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

² A.M.A., *Guides* 472-78.

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

⁴ *Id.*

⁵ In view of the Board's order, the August 19, 2010 nonmerit decision will not be discussed.