

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

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**G.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Tampa, FL, Employer**

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**Docket No. 11-190  
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 November 2, 2010 appellant filed an application for review of a June 9, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for an increased schedule award. The appeal was docketed as number 11-190. Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision.

This case has previously been before the Board. In an order dated May 20, 2010, the Board set aside OWCP's April 3 and July 6, 2009 decisions denying appellant's request for an increased schedule award. The Board found the case was not in posture for a decision due to the failure of the district medical adviser (DMA) and OWCP's hearing representative to calculate appellant's schedule award entitlement pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The case was remanded for a proper assessment of the medical evidence pursuant to the sixth edition of the A.M.A., *Guides*.<sup>1</sup> The facts contained in the Board's previous order are incorporated herein by reference.

On remand, OWCP forwarded the case to the DMA for a review and an opinion as to the degree of permanent impairment of appellant's right upper extremity based on the sixth edition

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<sup>1</sup> Docket No. 09-1898 (issued May 20, 2010).

of the A.M.A., *Guides*. In a report dated June 7, 2010, the DMA opined that appellant was not entitled to an increased schedule award. Noting that appellant's shoulder impairment had been addressed under a previous award, he stated that there was no additional impairment. Referring to a July/August 2009 A.M.A., *Guides* newsletter, the DMA stated that there was no objective evidence of radiculopathy.<sup>2</sup> The DMA did not refer to any specific provisions of the A.M.A., *Guides*, nor did he identify the medical report he used as the basis for his determination. In a decision dated June 9, 2010, OWCP denied appellant's claim for an increased schedule award, based upon the DMA's June 7, 2010 report.

Effective May 1, 2009, OWCP was required to begin applying the sixth edition of the A.M.A., *Guides*<sup>3</sup> in calculating schedule awards.<sup>4</sup> 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>5</sup> As the Board stated in its prior order, OWCP was required to calculate appellant's entitlement to an increased schedule award pursuant to the sixth edition of the A.M.A., *Guides*. However, neither the claims examiner nor the DMA, upon whose report he relied, addressed the medical evidence of record reflecting the current status of all accepted conditions in light of provisions of the sixth edition of the A.M.A., *Guides*.<sup>6</sup> Appellant's receipt of a schedule award for a 14 percent impairment of his right upper extremity on March 7, 2006 does not preclude his receipt of an additional award, based upon new medical evidence.<sup>7</sup>

The Board finds that this case is not in posture for a decision, as OWCP did not follow the instructions contained in the Board's May 20, 2010 order. It failed to determine appellant's entitlement to an increased schedule award according to the sixth edition of the A.M.A., *Guides*, as required. Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has an obligation to see that justice is done. Once it has begun an investigation, it must pursue the evidence as far as reasonably

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<sup>2</sup> The DMA stated that impairment rating under OWCP procedure is not determined by imaging studies alone, and that sensory loss of the ring and middle finger of the right hand is not consistent with a herniated disc at C5-6.

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>4</sup> See FECA Bulletin No. 09-03 (issued March 15, 2008).

<sup>5</sup> *Id.*

<sup>6</sup> The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). A.M.A., *Guides* (6<sup>th</sup> ed. 2008), section 1.3, p. 3. Under the sixth edition of the A.M.A., *Guides*, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). *Id.* at 385-419. The net adjustment formula is (GMFH-CDX) + (GMPE - CDX) + (GMCS- CDX). *Id.* at 411.

<sup>7</sup> A claimant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Tommy R. Martin*, 56 ECAB 273 (2005).

possible.<sup>8</sup> The medical evidence of record does not comport with the A.M.A., *Guides* or provide a complete analysis of appellant's upper extremity impairment. The case will be remanded for a proper calculation. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' June 9, 2010 decision be set aside and the case is remanded for further development 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

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<sup>8</sup> A.A., 59 ECAB 726 (2008).