

sustained a right shoulder injury when a door struck her in the shoulder. OWCP accepted the claim for a right shoulder contusion.

On March 12, 2009 appellant submitted a February 20, 2008 report from Dr. Nicholas Diamond, an osteopath, who provided a history and results on examination.² With respect to the right shoulder, Dr. Diamond opined that appellant had a 16 percent right arm impairment based on motor deficit and pain.³

Appellant submitted a new report from Dr. Diamond on October 20, 2009, which retained the date of February 20, 2008. In the revised report, Dr. Diamond calculated an impairment to the right arm based on the sixth edition of the A.M.A., *Guides*. He identified Table 15-5, with a default value of two percent for a shoulder contusion under class 1. Dr. Diamond identified a grade modifier of three for functional history, one for physical examination and zero for clinical studies. Applying the net adjustment formula, the net adjustment was +1, which did not change the default value of two percent.

In a report dated January 12, 2010, OWCP's medical adviser concurred that the permanent impairment for the right arm was two percent. The medical adviser referenced the tables and analysis used by Dr. Diamond. The date of maximum medical improvement was identified as February 20, 2008, the date of Dr. Diamond's initial examination.

By decision dated May 17, 2010, OWCP issued a schedule award for a two percent right arm permanent impairment. The period of the award was 6.24 weeks from February 20, 2008.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ OWCP procedures provide that, effective May 1, 2009, all schedule awards are to be calculated under the sixth edition of the A.M.A., *Guides*.⁶ Any recalculations of previous awards which result

² Dr. Diamond noted in his history an injury to the left ankle on May 16, 2002, which he described as work related. That claim is not before the Board on this appeal.

³ Dr. Diamond stated that he was applying the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The references to the A.M.A., *Guides*, however, are from the fifth edition.

⁴ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁵ A. George Lampo, 45 ECAB 441 (1994).

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010).

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, 2009.⁷

ANALYSIS

OWCP accepted that appellant sustained a right shoulder contusion on May 14, 2002. Its decision regarding a schedule award in this case was dated May 17, 2010. Since the decision was issued after May 1, 2009, it is properly based on application of the sixth edition of the A.M.A., *Guides*.

In his revised February 20, 2008 report, Dr. Diamond properly identified Table 15-5, the shoulder regional grid. For a shoulder contusion with residual symptoms and consistent objective findings, the diagnosis class (CDX) is 1, with a default impairment of two percent for the arm.⁸ The default value may be modified based on grade modifiers for Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁹ The Board notes that under Table 15-5 for a class 1 shoulder contusion, a net adjustment of +1 or -1 still results in a two percent arm impairment.¹⁰

Dr. Diamond found the GMFH was three (severe problem), the GMPE was one (mild problem) and the GMCS was zero (no problem, or no available studies). Applying the net adjustment formula of $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$, results in a net adjustment of +1. As noted above, as appropriate, this does not change the default value of two percent. OWCP's medical adviser concurred with Dr. Diamond's calculations.

The Board finds that the weight of the medical evidence does not establish more than a two percent permanent impairment to the right arm. The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's impairment was two percent, he is entitled to two percent of 312 weeks, or 6.24 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.¹¹ In this case, OWCP's medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Diamond. The award therefore properly runs for 6.24 weeks commencing on February 20, 2008.

⁷ *Id.*

⁸ A.M.A., *Guides* 401, Table 15-5.

⁹ *Id.* at 406-411, Tables 15-6 to 15-9.

¹⁰ *Id.* at 401, Table 15-5. A +2 adjustment is a 3 percent impairment, a -2 adjustment results in a 1 percent arm impairment.

¹¹ *Albert Valverde*, 36 ECAB 233, 237 (1984).

On appeal, appellant's representative states that "this case" was submitted prior to May 1, 2009 and argues that the fifth edition of the A.M.A., *Guides* should be the applicable in this case. It is, as noted above, the date of OWCP's decision that determines which edition should be applied. There is no vested right to a schedule award decision under the fifth edition of the A.M.A., *Guides*.¹² Since OWCP's decision was issued after May 1, 2009, it was properly based on the sixth edition.

CONCLUSION

The Board finds that the evidence does not establish that appellant has more than a two percent permanent impairment to her right arm.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 17, 2010 is affirmed.

Issued: August 12, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² See *H.M.*, Docket No. 10-2205 (issued June 6, 2011).