DECISION AND ORDER

Before: RICHARD J. DASCHBACH, Chief Judge
       MICHAEL E. GROOM, Alternate Judge
       JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 22, 2011 appellant, through her attorney, filed a timely appeal from the December 21, 2010 Office of Workers’ Compensation Programs’ (OWCP) decision which denied appellant’s claim for a schedule award. Pursuant to the Federal Employees’ Compensation Act1 (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant met her burden of proof to establish that she has permanent impairment of the right arm.

FACTUAL HISTORY

On February 5, 2002 appellant, then a 59-year-old mail handler, sustained an injury to her right hand while removing plastic straps on bundles at work. OWCP accepted the claim for a

1 5 U.S.C. § 8101 et seq.
right wrist sprain, right de Quervain’s disease and right carpal tunnel syndrome with radial styloid tenosynovitis. Appellant received compensation for injury-related disability for work.

On January 29, 2008 appellant filed a claim for a schedule award. In a December 6, 2007 report, Dr. Nicholas Diamond, an osteopath specializing in osteomaniulative manipulative medicine, noted appellant’s history of injury and treatment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (hereinafter, *A.M.A., Guides*), he determined that appellant had 56 percent right arm impairment, based on lost range of motion, pinch deficit and sensory deficit and 4 percent left arm impairment.

By letter dated October 21, 2008, OWCP referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. David Rubenfeld, a Board-certified orthopedic surgeon. In a November 18, 2008 report, Dr. Rubenfeld examined appellant and opined that appellant had 30 percent impairment of the right arm.

On September 29, 2009 OWCP indicated that, since the time of Dr. Rubenfeld’s examination, the sixth edition of the *A.M.A., Guides* became effective. It requested that Dr. Rubenfeld provide an addendum report applying the sixth edition of the *A.M.A., Guides*. OWCP did not receive a response. In an April 5, 2010 letter to appellant’s Congressional representative, it indicated that a request for an addendum was sent to the second opinion physician on September 29, 2009. However, as a response had not been received, it was in the process of scheduling another second opinion examination.

OWCP referred appellant for a new second opinion examination to Dr. Stanley Askin, a Board-certified orthopedic surgeon. In a report dated April 30, 2010, Dr. Askin utilized the *A.M.A., Guides* and noted appellant’s history of injury and treatment. Examination revealed a bony prominence at the right second carpometacarpal joint, which he described as “carpal bossing, an osteoarthritic manifestation.” Dr. Askin also noted some tenderness and thickening at the right thumb but no overt triggering of either hand. Appellant displayed “subjective imperfections” when she responded to the physician’s request to show what she could do without hurting herself. For example, for the neck, Dr. Askin noted that she “showed full cervical flexion, full rotation to each side without complaint, but when she extended her neck (looking up) she told me that made her dizzy. Spurling’s made her dizzy.” Also, right shoulder range of motion was limited on examination but, passively, she allowed her right shoulder to be moved with no firm endpoint. Appellant had full range of motion of the elbows, forearms, wrists, fingers and thumbs. Dr. Askin also found that appellant was able to exert with the trapezii, latissimus dorsi, pectoralis major, deltoids, biceps, biceps, wrist flexors or wrist extensors, although he noted that she was not a very strong individual. He also found that there were no atrophic or dystrophic changes about appellant’s hands, but that she did report diminished two-point discrimination (more than 1 centimeter) in the right thumb and indexed digits. Dr. Askin noted that the clinical carpal tunnel tests included the Phalen’s and Tinel’s tests which were both positive (and both subjective). He referred to April 2, 2002 and April 11, 2007 electromyogram reports that were consistent with right carpal tunnel syndrome. Dr. Askin concluded that

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2 The record reflects that appellant had a separate claim for a June 6, 2002 injury that OWCP accepted for a contusion of the left elbow. This claim is not before the Board on the present appeal.
The schedule award provision of FECA, and its implementing federal regulations, set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However,

3 Dr. Askin also noted that appellant appeared to be suffering from effects of chemotherapy attributable to cancer treatment.


5 20 C.F.R. § 10.404.
FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.\(^6\) For decisions issued after May 1, 2009, the sixth edition will be used.\(^7\)

**ANALYSIS**

The evidence of record is insufficient to establish that appellant is entitled to a schedule award for the right arm in accordance with the sixth edition of the A.M.A., *Guides*.

The Board notes that while appellant submitted a December 6, 2007 report from Dr. Diamond in support of his claim, that report cannot be utilized to determine impairment as the physician evaluated appellant under the fifth edition of the A.M.A., *Guides*. Effective May 1, 2009, the sixth edition is to be used.\(^8\)

The Board notes that the only medical evidence which provided an impairment rating under the appropriate edition of the A.M.A., *Guides* is Dr. Askin’s April 30, 2010 report and the June 14, 2010 report of the medical adviser. Both physicians determined that there were no objective findings to support an impairment rating. Dr. Askin concluded that appellant did not sustain a ratable impairment. He noted appellant’s history of injury and treatment and examined appellant. Dr. Askin conducted a thorough examination, during which he observed full range of motion in appellant’s right hand and wrist. He found no objective basis on which to rate any impairment of the right arm due to the accepted conditions. In view of the lack of objective findings, Dr. Askin opined that appellant did not sustain ratable upper extremity impairment for her right carpal tunnel syndrome. OWCP’s medical adviser reviewed Dr. Askin’s report and concurred that appellant had no ratable impairment of upper extremity due to her accepted conditions. The Board finds that Dr. Askin’s opinion constitutes the weight of the medical evidence. Dr. Askin examined appellant, reviewed his history and found no basis on which to attribute any permanent impairment to the accepted conditions. There is no current medical evidence conforming with the sixth edition of the A.M.A., *Guides*, that supports work-related permanent impairment of the right arm.

As noted, OWCP evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence supporting that he has permanent impairment of a scheduled member of the body.\(^9\) As such evidence has not been submitted, appellant has not established entitlement to a schedule award.

On appeal, appellant’s counsel disagreed with the findings provided by Dr. Askin and suggested a conflict in the medical evidence. The Board notes that Dr. Askin’s report is the only

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\(^{6}\) *Id.* at § 10.404(a).

\(^{7}\) FECA Bulletin No. 09-03 (issued March 15, 2009).

\(^{8}\) See *id*.

\(^{9}\) See Annette M. Dent, 44 ECAB 403 (1993).
report which conformed with the sixth edition of the A.M.A., *Guides*. He explained the reasons why appellant’s accepted conditions did not cause permanent impairment of the right arm.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.\(^{10}\)

**CONCLUSION**

The Board finds that OWCP properly denied appellant’s claim for a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2010 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: December 15, 2011
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees’ Compensation Appeals Board

\(^{10}\) A.M.A., *Guides* 497, section 16.2.