

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 10-2364
Issued: July 14, 2011**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
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 September 20, 2010 appellant, through his attorney, filed a timely appeal of the June 1, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed the denial of an increased schedule award.¹ He argued, among other things, that OWCP applied the wrong edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

The Board has duly considered the matter and finds that OWCP's June 1, 2010 decision must be set aside. Section 8107 of the Federal Employees' Compensation Act (FECA)² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment.

¹ On prior appeal, the Board set aside an August 1, 2007 OWCP decision granting schedules for 10 percent impairment of each upper extremity and remanded the case to resolve a conflict in medical opinion as to the grade of sensory deficit or pain that is appropriate to use in rating the impairment. Docket No. 08-1328 (issued November 5, 2008).

² 5 U.S.C. § 8107.

OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.³

OWCP began using the sixth edition of the A.M.A., *Guides* effective May 1, 2009.⁴ FECA Bulletin 09-03 (issued March 15, 2009) states: “All schedule award decisions issued on or after May 1, 2009, should be based on the sixth edition of the A.M.A., *Guides* with the exceptions (such as statutory criteria) as noted.”⁵ Likewise, all impairment calculations made on or after May 1, 2009 must be based on the sixth edition.⁶

Appellant received a schedule award on February 1, 2007 for a 10 percent impairment of each upper extremity. On February 24, 2009 OWCP denied his claim for an increased award. On August 6, 2009, after the sixth edition of the A.M.A., *Guides* became effective, an OWCP hearing representative remanded the case for a supplemental report from the impartial medical specialist on the percentage of appellant’s impairment and for a *de novo* decision on his schedule award claim. On November 24, 2009, after the impartial medical specialist amended appellant’s impairment rating to five percent of each upper extremity under the fifth edition of the A.M.A., *Guides*, OWCP again denied an increased schedule award. An OWCP hearing representative affirmed on June 1, 2010.

The Board finds that OWCP applied the wrong edition of the A.M.A., *Guides*. When the hearing representative remanded the case on August 6, 2009 for further development on the percentage of appellant’s impairment, she should have instructed OWCP to obtain the calculation under the currently applicable sixth edition.⁷ Because OWCP did not base its November 24, 2009 and June 1, 2010 schedule award decisions on the sixth edition, the Board will remand the case for proper adjudication.⁸

³ 20 C.F.R. § 10.404.

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁵ See *M.P.*, Docket No. 10-1918 (issued May 16, 2011) (the applicable date of the sixth edition is as of the schedule award decision reached).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7.b(4) (January 2010). When a case is remanded for further development of some other issue, such as pay rate, a recalculation of the percentage of the award under the sixth edition is not required. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.8.c (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5.b (January 2010).

⁷ For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.0808.6.a (January 2010).

⁸ See *J.N.*, Docket No. 10-1500 (issued April 12, 2011) (where an OWCP medical adviser based his November 20, 2009 review on the fifth edition, and OWCP denied an increased schedule award on December 2, 2009, the Board found that OWCP did not apply the appropriate edition of the A.M.A., *Guides*); *D.D.*, Docket No. 10-1493 (issued March 22, 2011) (finding that OWCP did not properly develop the medical evidence when it reviewed October 5, 2009 and January 19, 2010 evaluations under the fifth edition).

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

Issued: July 14, 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