

subsequently expanded to include the conditions of cerebral concussion, left knee internal derangement, left shoulder, hand and knee contusions and left supraspinatus partial tear.

On August 3, 2007 appellant filed a claim for a schedule award. In support of his claim, he subsequently submitted an August 30, 2007 report from Dr. Maher F. Habashi, a treating Board-certified orthopedic surgeon, who determined that appellant had a five percent impairment of his left arm using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). On November 27, 2007 Dr. Habashi diagnosed left shoulder strain, lumbar strain and left knee chondromalacia and indicated an unknown date of recovery.

On May 23, 2008 an Office medical adviser reviewed Dr. Habashi's reports and recommended referral to a second opinion physician based on the conflicting information from Dr. Habashi as to whether maximum medical improvement had been reached. He also noted that Dr. Habashi provided no physical findings supporting his impairment rating.

On December 18, 2008 Dr. Habashi concluded that appellant had an eight percent permanent impairment of the left arm and a five percent impairment of the left trigger finger. He indicated that appellant reached maximum medical improvement on October 2, 2008.

Appellant filed a schedule award claim on January 30, 2009.

On February 26, 2009 an Office medical adviser reviewed Dr. Habashi December 18, 2008 report and concluded that appellant had a five percent left upper extremity impairment and zero percent left lower extremity impairment.

By decision dated March 6, 2009, the Office issued a schedule award granting appellant five percent impairment of the left arm. The period of the award was for 15.6 weeks and ran from October 2, 2008 through January 19, 2009.

On March 14, 2009 appellant requested an oral hearing before an Office hearing representative, which his counsel requested be changed to a telephonic hearing.

By decision dated June 16, 2009, an Office hearing representative conducted a preliminary review and determined the case was not in posture for a decision. He vacated the March 6, 2009 schedule award decision and remanded for the Office to determine a permanent impairment for the left upper extremity based on both the shoulder and hand, if the hand/finger condition was accepted. The Office hearing representative instructed that credit should be given for the compensation previously paid for a schedule award.

The Office subsequently received an April 21, 2009 report from Dr. Habashi who diagnosed cervical and lumbar strains, left knee internal derangement and contusion of the left shoulder, wrist and hand. A physical examination of the left index finger revealed intermittent mild-to-moderate pain, tenderness over the proximal interphalangeal joint, decreased flexion and weakness on extension. Dr. Habashi reported a left shoulder x-ray interpretation revealed acromioclavicular arthritis while a physical examination revealed tenderness on palpation, 130 degrees abduction and 60 degrees internal rotation. He reiterated his impairment ratings

including an eight percent permanent impairment of the left arm and five percent impairment of the left index finger.

In a September 2, 2009 report, Dr. Donald McQueen, a second opinion Board-certified orthopedic surgeon, conducted a physical examination and reviewed the statement of accepted facts and medical evidence. Range of motion for the left shoulder included 110 degrees abduction, 10 to 15 degrees external rotation, very limited internal rotation and inability to put arm behind the back. Findings on examination for the left finger included 10 to 70 degrees index proximal interphalangeal joint and less than 90 degrees metacarpophalangeal joint flexion. Dr. McQueen reported that due to this appellant was quite limited in flexing his left index finger. He concluded that appellant had six percent left hand injury or five percent left upper extremity injury using the A.M.A., *Guides* (sixth edition). Using Table 15-31, page 470, Dr. McQueen found a 3 percent impairment of the proximal interphalangeal joint due to lack of full extension and a 21 percent impairment for 70 degrees flexion resulting in a total 24 percent left finger impairment. Next, he concluded that appellant had six percent impairment as a result of 80 degrees flexion of the metacarpophalangeal joint. Using Table 15-12, page 421, these figures are added which, when utilizing Table 15-12 to convert, results in a 30 percent digital impairment or 6 percent impairment of the left hand or 5 percent left upper extremity impairment. In an October 1, 2009 addendum, Dr. McQueen provided an impairment rating for appellant's left shoulder of 14 percent for the left upper extremity. However, he opined that a shoulder impairment rating was premature as appellant had not reached maximum medical improvement for this condition.

In a supplemental November 16, 2009 report, Dr. McQueen stated that appellant sustained injuries to his left hand and left shoulder supraspinatus tendon tear as a result of the November 30, 2005 employment injury. He reiterated his impairment rating of 30 percent digital impairment for appellant's left index finger. Using Table 15-12, page 421 of the A.M.A., *Guides* (sixth edition), Dr. McQueen reconfirmed the conversion to a six percent impairment of the left hand.

On December 10 and 15, 2009 the Office medical adviser reviewed Dr. McQueen's reports and concurred with the six percent impairment rating for appellant's left trigger finger. He advised that a schedule award for the left shoulder was premature as appellant had not reached maximum medical improvement.

By decision dated December 22, 2009, the Office issued a schedule award granting appellant a six percent impairment of the left hand. The period of the award was for 14.64 weeks and ran from January 20 through May 2, 2009 and the date of maximum medical improvement was listed as June 30, 2007. The Office noted that a schedule award for the left shoulder was not included as appellant had not reached maximum medical improvement for this condition.

On December 28, 2009 appellant's counsel requested a telephonic hearing before an Office hearing representative, which was held on March 18, 2010.

On June 9, 2010 the Office hearing representative affirmed the December 22, 2009 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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, 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴ Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁵

ANALYSIS

The Office accepted appellant's claim for cerebral concussion, left knee internal derangement, left shoulder and left knee contusions and left supraspinatus partial tear. On December 22, 2009 it issued a schedule award granting appellant a six percent impairment of the left hand.

On April 21, 2009 Dr. Habashi, an attending Board-certified orthopedic surgeon, opined that appellant sustained a five percent impairment of the left index finger based on decreased flexion and weakness on extension. However, he failed to explain how he arrived at his impairment rating. Dr. Habashi did not refer to any edition of the A.M.A., *Guides* or the specific tables he applied to support his rating. It is well established that, when an attending physician's report provides an estimate of impairment but does not address how the rating was made under the A.M.A., *Guides*, it is of reduced probative value.⁶

On September 2, 2009 Dr. McQueen, a second opinion Board-certified orthopedic surgeon, determined that appellant had five percent impairment of the hand due to loss of motion in the left index finger. He concluded that appellant had a 3 percent impairment of the proximal interphalangeal joint due to lack of full extension and a 21 percent impairment for 70 degrees flexion resulting in a total 24 percent left finger impairment and a 6 percent impairment for 80 degrees flexion of the metacarpophalangeal joint based on Table 15-31, page 470. Using Table

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

⁶ See *J.G.*, Docket No. 09-1128 (issued December 7, 2009); *Richard A. Neidert*, 57 ECAB 474 (2006) (attending physician's reports are of little probative value where the A.M.A., *Guides* are not properly followed); see also *R.A.*, Docket No. 09-2134 (issued August 3, 2010) (An attending physician should clearly address the principles of the A.M.A., *Guides* in explaining how an impairment rating is reached. Absent such explanation, the Office may rely on the opinion of its medical adviser).

15-12, page 421, Dr. McQueen added these figures to find a total 30 percent digital impairment or converting to 6 percent impairment of the left hand.

An Office medical adviser agreed with Dr. McQueen's finding that appellant had a 30 percent impairment of the hand due to loss of flexion of the proximal interphalangeal and metacarpophalangeal joints according to Table 15-31 on page 470 and Table 15-12, page 421 of the A.M.A., *Guides*. He converted the 30 percent impairment of the left index finger into a 6 percent impairment of the hand. The Board finds that there is no current, probative medical evidence consistent with the A.M.A., *Guides* to establish that appellant has more than a six percent impairment of the hand.

CONCLUSION

The Board finds that appellant has not established that he is entitled to a greater than six percent impairment of the left hand, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 9, 2010 is affirmed.

Issued: June 14, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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