

By letter dated May 11, 2009, the Office advised Dr. Bialecki-Haase that she needed to submit a new report and impairment rating in conformance with the updated, sixth edition of the A.M.A., *Guides*, which became effective as of May 1, 2009.¹ Dr. Bialecki-Haase did not respond to this request. The employee died on May 29, 2009.

In a November 13, 2009 report, an Office medical adviser reviewed Dr. Bialecki-Haase's August 25, 2008 report and found that the employee had sustained a seven percent impairment of the right lower extremity due to his accepted right lateral epicondylitis condition pursuant to Table 15-4 at pages 398-400 of the sixth edition of the A.M.A., *Guides*.

By decision dated December 8, 2009, the Office denied appellant's request for an additional schedule award. It stated that the Office medical adviser's seven percent impairment rating represented the weight of the medical evidence because his November 13, 2009 report contained the only impairment evaluation of record rendered in conformance with the updated, sixth edition of the A.M.A., *Guides*. The Office did not discuss or analyze his findings or indicate whether he properly applied the relevant tables of the A.M.A., *Guides*.

By letter dated December 15, 2009, appellant's attorney requested an oral hearing, which was held on March 19, 2010.

By decision dated June 22, 2010, an Office hearing representative affirmed the December 8, 2009 Office decision. The hearing representative stated that the Office medical adviser reviewed the findings from Dr. Bialecki-Haase's August 25, 2008 report and properly applied the relevant tables of the A.M.A., *Guides*. However, she did not discuss or analyze the Office medical adviser's findings or provide reasons to support her finding that his impairment rating was properly rendered in accordance with the applicable tables of the sixth edition of the A.M.A., *Guides*.

Section 20 C.F.R. § 10.126 requires the Office to issue a decision containing findings of fact and a statement of reasons.² The Office erred in its December 8, 2009 and June 22, 2010 decisions by failing to adequately support its reliance on the Office medical adviser's November 13, 2009 report and provide sufficient reasons why it found that his impairment rating represented the weight of the medical evidence. The hearing representative's decision is additionally flawed because the only reason it provided for relying on the Office medical adviser's report was that it was the only impairment rating rendered in conformance with the sixth edition of the A.M.A., *Guides*. This acceptance of a rating, merely on the basis that it was rendered in conformance of the sixth edition, does not allow the Board a complete review of the basis of the decision. As the hearing representative did not correct these omissions and make the required findings in her June 22, 2010 decision, her affirmance of the December 8, 2009 Office decision was in error.

¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). As of May 1, 2009, the sixth edition will be used. FECA Bulletin No. 09-03 (issued March 15, 2008).

² 20 C.F.R. § 10.126.

The Board finds that the Office failed to give proper consideration to the medical evidence of record in this case. Accordingly, the case will be set aside and remanded for consideration of the medical evidence pursuant to the standards set out in 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.126. After such further development as the Office deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 22, 2010 be set aside and the case be remanded for further action consistent with this order of the Board.

Issued: May 25, 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