



accepted his claim for left shoulder strain, left trapezius strain and cervical strain. Appellant received appropriate compensation benefits.<sup>2</sup>

On March 23, 2010 appellant filed a (Form CA-7) claim for a schedule award. In an April 14, 2010 letter, OWCP informed him of the type of medical evidence needed to establish his claim for a schedule award.

In an April 26, 2010 report, Dr. Murray Robinson, a Board-certified neurological surgeon, noted that appellant had a one-level anterior cervical fusion 10 months ago and continued with neck and radiating left arm pain towards the middle finger. He indicated that appellant was working six hours of regular work with a weight restriction and two hours of restricted duty. Dr. Robinson examined appellant and noted that he had diffuse weakness in the left upper extremity with reflexes intact, decreased sensation towards the middle finger and cervical range of motion limited to 10 degrees towards the left secondary to pain. He indicated that appellant's postoperative magnetic resonance imaging (MRI) scan revealed adequate decompression. Dr. Robinson noted that appellant was unable to rotate past 10 degrees towards the left and had shoulder range of motion restricted with overhead work because of the cervical disc disease and cervical radiculopathy. He advised that appellant had diffuse decreased weakness in the left upper extremity groups, which included the deltoid, biceps, triceps, wrist extensors and hand intrinsic with decreased sensation towards the middle finger. Dr. Robinson determined that appellant had subjective complaints which included left hand pain and numbness and neck pain. He determined that appellant had a 25 percent whole body impairment as a result of his one fused cervical level and continued to have cervical radiculopathy "as per the cervical spine chart." Dr. Robinson advised that appellant had permanent restrictions and reached maximum medical improvement.

In a May 12, 2010 report, OWCP's medical adviser noted appellant's history of injury and treatment and referred to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, hereinafter (A.M.A., *Guides*) (6<sup>th</sup> ed. 2008). He explained that the anterior cervical fusion at C6-7 was performed on June 2, 2009 with disappointing results and that appellant was "back at work, mostly." OWCP's medical adviser explained that while Dr. Robinson determined whole person impairment, OWCP did not recognize spinal or whole person impairments. He stated that OWCP directed the use of the A.M.A., *Guides* July/August 2009 newsletter for rating spinal nerve extremity impairment under the sixth edition of the A.M.A., *Guides*. OWCP's medical adviser indicated that the rating for a C7 moderate sensory deficit would correspond to two percent extremity. Additionally, the rating for a C7 moderate motor loss would correspond to nine percent impairment. OWCP's medical adviser added the two values for 11 percent impairment to the left upper extremity.

By decision dated May 17, 2010, OWCP granted appellant a schedule award for 11 percent permanent impairment of the left upper extremity.

On May 21, 2010 appellant requested a hearing, which was held on October 12, 2010. During the hearing, he referred to a September 13, 2010 report from his treating physician,

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<sup>2</sup> The record reflects that appellant underwent a cervical fusion on June 2, 2009.

Dr. Robinson, who noted that appellant had decreased sensation in his index finger as well as his middle finger. OWCP also received a copy of appellant's report.

In an October 25, 2010 report, Dr. Robinson noted that appellant was post one-level anterior cervical discectomy and fusion. He determined that appellant continued to show "5-/5" motor strength throughout the left upper extremity which included the wrist extensors and triceps with obvious atrophy of the forearm musculature, left compared to right side, with decreased sensation to light touch in the index and middle fingers. Dr. Robinson opined that appellant had a permanent chronic cervical radiculopathy causing decreased sensation and muscle atrophy secondary to a cervical disc herniation.

By decision dated December 27, 2010, OWCP's hearing representative affirmed the May 17, 2010 decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> 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. For decisions issued after May 1, 2009, the A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for decision. Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>6</sup>

Appellant's claim was accepted for left shoulder strain, left trapezius strain and cervical strain. On March 23, 2010 he filed a Form CA-7 claim for a schedule award.

In support of his claim for a schedule award, appellant provided an April 26, 2010 impairment rating from Dr. Robinson, who noted appellant's findings and determined that appellant had 25 percent whole body impairment as a result of his one fused cervical level.

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> FECA Bulletin No. 09-03 (issued March 15, 2009). A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>6</sup> *Horace L. Fuller*, 53 ECAB 775, 777 (2002).

FECA, however, does not provide a schedule award based on whole person impairments.<sup>7</sup> Thus, this report would be of limited probative value.

Board precedent is well settled that when an attending physician's report gives an estimate of impairment but does not address how the estimate is based upon the A.M.A., *Guides* OWCP may follow the advice of its medical adviser where he or she has properly applied the A.M.A., *Guides*.<sup>8</sup>

OWCP's medical adviser provided an opinion that appellant had 11 percent impairment of the left upper extremity. He properly referenced the A.M.A., *Guides* newsletter<sup>9</sup> used to determine extremity ratings from spinal nerve impairment. OWCP's medical adviser noted that the rating for a C7 moderate sensory deficit would correspond to a two percent extremity and the rating for a C7 moderate motor loss would correspond to a nine percent impairment and added the values an 11 percent impairment to the left upper extremity. However, he did not refer to or disclose any specific tables or charts of the A.M.A., *Guides* or the newsletter to support how he arrived at his conclusion. OWCP's medical adviser report is therefore of limited probative value. Accordingly, OWCP did not properly discharge its responsibilities in developing the record.<sup>10</sup> For this reason, the record should be remanded to it for further development.

On remand OWCP should further develop the medical evidence of record by requesting that its medical adviser provide a reasoned opinion regarding appellant's left arm impairment explaining the basis of impairment under the A.M.A., *Guides*, based upon a review of pertinent examination findings, such as range of motion and review of diagnostic test results. If OWCP's medical adviser is unable to render a reasoned opinion fully explaining the application of the *Guides*, OWCP shall refer appellant to an appropriate Board-certified specialist for a second opinion regarding the extent of his left arm impairment under the A.M.A., *Guides* and OWCP procedures. Following this and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's schedule award claim.

On appeal, appellant contends that OWCP's medical adviser did not consider all of his accepted conditions and did not sufficiently explain the basis of his impairment rating. As noted,

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<sup>7</sup> See *Tania R. Keka*, 55 ECAB 354 (2004); *James E. Mills*, 43 ECAB 215 (1991) (neither FECA, nor its implementing regulations provide for a schedule award for impairment to the body as a whole).

<sup>8</sup> See *Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

<sup>9</sup> The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. Recognizing that certain jurisdictions, such as under FECA, mandate ratings for extremities and preclude ratings for the spine, the A.M.A., *Guides* has offered an approach to rating spinal nerve impairments consistent with sixth edition methodology. Christopher R. Brigham, M.D., *Rating Spinal Nerve Extremity Impairment Using the Sixth Edition*, The Guides Newsletter (A.M.A., Chicago, Ill.), July/August 2009. OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010) (Exhibits 1, 4).

<sup>10</sup> See *supra* note 6.

the Board is remanding the case for further medical development regarding the extent of appellant's left arm impairment.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 27, 2010 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this decision of the Board.

Issued: November 2, 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