

acromioplasty with biceps tenodesis which was performed on May 8, 2009 by Dr. Mark J. Stenlik, an attending Board-certified orthopedic surgeon. On July 9, 2009 OWCP accepted that appellant sustained a recurrence of disability on May 2, 2009 causally related to his September 12, 2008 employment injuries.²

In a June 21, 2010 medical report, Dr. Stenlik advised that appellant had diminished range of motion of his right shoulder. Appellant had an excellent recovery postacromioplasty with biceps tenodesis. Dr. Stenlik found that appellant had 25 percent loss of use of his right shoulder which included 15 percent impairment due to the bicep tenotomy and 10 percent for loss of internal and external range of motion. He made no reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

By letter dated July 15, 2010, OWCP informed appellant that, effective May 1, 2009, all permanent impairment determinations were to be completed in accordance with the sixth edition of the A.M.A., *Guides*.³ It asked that he submit a medical report in accordance with the sixth edition. In the same letter, OWCP asked that Dr. Stenlik provide an impairment evaluation in accordance with the sixth edition. Appellant was allotted 30 days to submit the requested evidence. He did not respond.

In a September 17, 2010 decision, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish permanent impairment to a scheduled member.

LEGAL PRECEDENT

A claimant seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.⁴ A claimant seeking a schedule award therefore has the burden of establishing that his accepted employment injury caused permanent impairment of a scheduled member, organ or function of the body.⁵

The schedule award provision of FECA⁶ and its implementing regulations⁷ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. However, neither FECA nor the regulations specify the

² The Board notes that it appears OWCP inadvertently stated that the accepted recurrence of disability occurred on May 8, 2009 rather than May 2, 2009 as indicated in appellant's claim form. It later referenced May 2, 2009 as the recurrence date in a telephone discussion with appellant.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁵ *E.g., Russell E. Grove*, 14 ECAB 288 (1963) (where medical reports from the attending physicians showed that the only leg impairment was due to arthritis of the knees, which was not injury related, the claimant failed to meet his burden of proof to establish entitlement to a schedule award).

⁶ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁷ 20 C.F.R. § 10.404.

manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁸ For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.⁹

ANALYSIS

OWCP accepted appellant's claim for right rotator cuff and right bicep strains. It authorized arthroscopic surgery to treat the accepted conditions. Appellant later claimed entitlement to a schedule award due to his accepted conditions. In a September 17, 2010 decision, OWCP denied appellant's claim for a schedule award. The Board finds that appellant has not met his burden of proof to establish that he sustained permanent impairment to a scheduled member due to his accepted conditions.

In a June 21, 2010 report, Dr. Stenlik found that appellant had 25 percent impairment of his right shoulder which included 15 percent impairment due to the bicep tenotomy and 10 percent impairment for diminished range of motion. However, Dr. Stenlik failed to explain how he arrived at his impairment ratings based on appellant's accepted conditions.¹⁰ He did not refer to any edition of the A.M.A., *Guides* or the specific tables or figures he applied to support his ratings. The Board finds, therefore, that Dr. Stenlik's opinion is of diminished probative value in determining the extent of appellant's permanent impairment.

There is no other relevant medical evidence of record. Although OWCP advised appellant of the need for a report consistent with the sixth edition of the A.M.A., *Guides*, the deficiencies in his claim on July 15, 2010 and allotted him 30 days in which to submit the requisite evidence, he did not respond. Thus, the Board finds that OWCP properly denied his schedule award claim.

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.

CONCLUSION

The Board finds that appellant has failed to establish that he is entitled to a schedule award for his right shoulder.

⁸ *Supra* note 5.

⁹ *Id.*

¹⁰ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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