

number xxxxxx672. On June 15, 2000 appellant filed an occupational disease claim for neck and back conditions causally related to employment factors. OWCP accepted the claim for cervical and lumbar sprains under case number xxxxxx614. On January 22, 2002 appellant fell in a parking lot and injured her neck, right shoulder and back. This claim was accepted for right shoulder, neck and lumbar sprains under case number xxxxxx634. On December 14, 2006 appellant injured her right knee and right ankle when she stumbled and fell while carrying mail; OWCP accepted this claim for right knee sprain and right ankle sprain under case number xxxxxx161.²

On April 21, 2008 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her upper extremities.

In a December 13, 2005 report, Dr. David O. Weiss, an osteopath, impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He based this finding on a Grade 2 sensory deficit of the right C6 nerve root, which yielded a six percent upper extremity impairment under Table 15-15 and Table 15-17 at page 532 of the A.M.A., *Guides*; a Grade 2 sensory deficit of the right C7 nerve root, which yielded a four percent upper extremity impairment under Table 15-15 and Table 15-17; a grade 2 sensory deficit of the left C5 nerve root, which yielded a four percent bilateral upper extremity impairment under Table 15-15 and Table 15-17; and a grade 2 sensory deficit of the left C6 nerve root, which yielded a six percent upper extremity impairment under Table 15-15 and Table 15-17, for a total combined impairment of 10 percent to both upper extremities.

By letter dated December 23, 2009,³ OWCP advised Dr. Weiss that he needed to submit an impairment rating in conformance with the sixth edition of the A.M.A., *Guides*, which became effective as of May 1, 2009.⁴

In a March 5, 2010 report, Dr. Weiss found that appellant had a one percent permanent partial impairment of the left and right upper extremities pursuant to the sixth edition of the A.M.A., *Guides*. With regard to the right upper extremity, he determined that appellant had a default impairment of class 1 based on sensory deficit of the radial nerve at C6 and C7, which yielded a grade C impairment of one percent at Table 15-21, page 441 of the A.M.A., *Guides*, the table used for rating peripheral nerve impairment for the upper extremities.⁵ Applying the net adjustment formula at pages 406, 410 and 411 of the A.M.A., *Guides*,⁶ Dr. Weiss found that appellant had a class 1 impairment, the rating utilized for a mild problem for sensory deficit. He found that the grade at Table 15-7 for functional history was two, for a moderate problem which included difficulty with self-care activities, but unassisted; and the grade at Table 15-9 for

² These are the accepted facts of this case, which are uncontroverted. There is no contemporaneous documentation pertaining to these injuries and accepted conditions.

³ This letter is not contained in the record. OWCP refers to the letter in its May 18, 2010 decision.

⁴ 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).

⁵ A.M.A., *Guides* 441.

⁶ *Id.* at 406, 410-411.

clinical studies was two, for a moderate problem. Pursuant to the formula set forth at Table 15-21, he then subtracted the grade modifier of one from grade 2 for both functional history and clinical history at Table 15-7, which yielded a net adjusted grade of one plus one -- a total grade of two, which was one percent impairment of the right upper extremity at Table 15-21, page 441.

With regard to the left upper extremity, Dr. Weiss found that appellant had a class 1 impairment of the left C5 and C6 axillary nerve root, the rating utilized for a mild problem for sensory deficit at Table 15-21, page 436.⁷ He found that the grade at Table 15-7 for functional history was two, for a moderate problem which included difficulty with self-care activities, but unassisted; and the grade at Table 15-9 for clinical studies was two, for a moderate problem. Utilizing Table 15-21 at page 440, he then subtracted the grade modifier of one from grade 2 for both functional history and clinical history at Table 15-7, which yielded a net adjusted grade of one plus one. This amounted to a total, net adjusted grade of two, which equated to a one percent impairment of the left upper extremity at Table 15-21, page 436.

In an April 19, 2010 report, an OWCP medical adviser agreed with Dr. Weiss and found that appellant had one percent permanent impairment of the right upper extremity impairment and one percent impairment of the left upper extremity.

By decision dated May 18, 2010, OWCP granted appellant schedule awards for a one percent permanent impairment of the right upper extremity and a one percent permanent impairment of the left upper extremity.

By letter dated June 1, 2010, appellant's attorney requested a review of the written record. He contended that OWCP failed to make a timely schedule award determination under the fifth edition of the A.M.A., *Guides* and thereby deprived appellant of his due process rights under FECA. Counsel argued that OWCP's delay in adjudicating this schedule award claim reduced the amount of appellant's schedule award. He noted that the adoption of the sixth edition of the A.M.A., *Guides* substantially revised the evaluation methods used in previous editions of the A.M.A., *Guides* and consequently resulted in a decrease in the percentage of impairment calculated in schedule awards.

By decision dated September 8, 2010, an OWCP hearing representative affirmed the May 18, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁸ and its implementing regulations⁹ 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

⁷ *Id.* at 436.

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides*. (6th ed. 2009).

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.¹⁰ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹¹

ANALYSIS

In its May 18, 2010 decision OWCP granted appellant a schedule award for a one percent impairment of the right upper extremity and a one percent impairment of the left upper extremity, using the applicable tables of the sixth edition of the A.M.A., *Guides*. The section of the A.M.A., *Guides* which rates diagnosis-based impairments for the upper extremities is located at Chapter 15, which states at page 387, section 15.2 that impairments are defined by class and grade. This section states:

“The impairment class (IC) is determined first, by using the corresponding diagnosis-based regional grid. The grade is then determined using the adjustment grids provided in Section 15.3. Once the impairment class has been determined, based on the diagnosis, the grade is initially assigned the default value, C. The final impairment grade, within the class, is calculated using the grade modifiers, or nonkey factors, as described in Section 15.3. Grade modifiers include functional history, physical examination, and clinical studies. The grade modifiers are used on the Net Adjustment Formula described in Section at 15.3d to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C. by the calculated net adjustment.” The lowest possible grade is A, and adjustments less than minus 2 from the default value C will automatically be considered A; the highest possible grade is E, and adjustments greater than plus 2 will automatically be considered E.

“The regional grid is used for 2 purposes: (1) to determine the most appropriate class for a specific regional diagnosis and (2) to determine the final impairment after appropriate adjustments are made using the grade modifiers.”¹²

Using the formula above and the net adjustment formula outlined at pages 406 to 411 of the A.M.A., *Guides*, Dr. Weiss properly found that appellant had a class 2 impairment for functional history at C6-7 at Table 15-7, which yielded a grade of two; he then applied the net adjustment formula at pages 406, 410 and 411 of the A.M.A., *Guides*, subtracting a grade modifier of one from two, for a net, adjusted total of one. He also found a class 2 impairment for clinical studies, which rendered a grade of two. Applying the net adjustment formula, a grade modifier of two for clinical studies at Table 15-21, page 436, was properly subtracted from the

¹⁰ *Id.*

¹¹ *Veronica Williams*, 56 ECAB 367, 370 (2005).

¹² A.M.A., *Guides* 387.

grade of one at Table 15-9; this equaled one percent impairment for clinical studies, as adjusted. Dr. Weiss added the grade 1 calculations for functional history and clinical history, for an adjusted overall grade of two, which yielded a one percent impairment of the right upper extremity for sensory deficit of the right C6 and C7 axillary nerve root at Table 15-21, page 440.

Dr. Weiss properly utilized the same method to calculate appellant's one percent left upper extremity impairment. He determined that appellant had a class 2 impairment for axillary nerve root impairment at C5-6, functional history, at Table 15-7, which yielded a grade of two; he then applied the net adjustment formula at pages 406, 410 and 411 of the A.M.A., *Guides*, subtracting a grade modifier of one from two, for a net, adjusted total of one. The net adjustment formula was then applied to find axillary nerve root impairment based on clinical studies. Using Table 15-7, a class 2 left upper extremity impairment was rated, which yielded a grade modifier of one, which subtracted from the grade of two for a net, adjusted to a grade of one. The grades of one for functional history and clinical studies were added, for a total of two, which amounted to a one percent left upper extremity impairment for sensory deficit of the left C5 and C6 axillary nerve root at Table 15-21, page 436.

On appeal, appellant's attorney asserts, as he did below, that she has a property right in a schedule award benefit under the fifth edition of the A.M.A., *Guides* and that a protected property interest cannot be deprived without due process, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976). In *Harry D. Butler*,¹³ the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A. *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.¹⁴ On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.¹⁵ The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

The Board finds that appellant has a one percent permanent impairment of her right and left upper extremities. This rating was based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. As appellant did not submit any medical evidence to support an award greater than the Board will affirm the schedule awards in this case.

CONCLUSION

The Board finds that appellant has no more than a one percent permanent impairment of the right upper extremity and a one percent left upper extremity impairment, for which she received schedule awards.

¹³ 43 ECAB 859 (1992).

¹⁴ *Id.* at 866.

¹⁵ FECA Bulletin No. 09-03 (March 15, 2009). FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 8, 2010 decision be affirmed.

Issued: October 7, 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