

OWCP accepted the conditions of neck sprain, disorder of bursae and tendons in right shoulder, and right wrist sprain and paid appropriate benefits. On December 14, 2007 appellant underwent authorized right shoulder arthroscopic surgery.² On February 17, 2009 he underwent an authorized C5-6 anterior cervical discectomy and fusion. Following his cervical surgery, appellant did not return to work. OWCP subsequently accepted the condition of intervertebral disc disorder with myelopathy, cervical region and found his right wrist sprain had resolved.

On May 16, 2010 appellant requested a schedule award. In a December 14, 2009 report, Dr. Jerome C. Hall, a Board-certified orthopedic surgeon, noted the history of injury and presented examination findings. He opined that appellant reached maximum medical improvement with regard to his accepted cervical condition. He stated that appellant had continued problems with right cervical radiculopathy, although improved with surgery. Examination did not reveal any neurologic deficit in either upper extremity. Based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), Dr. Hall opined that appellant had 28 percent impairment of the whole person based on diagnosis-related estimate (DRE) for the cervical spine, category IV, and referenced the table used under the fifth edition of the A.M.A., *Guides*. He opined that there was no impairment to the extremities.

On June 7, 2010 OWCP's medical adviser reviewed appellant's case file, including Dr. Hall's December 14, 2009 report. He opined that appellant reached maximum medical improvement December 14, 2009. Under the sixth edition of the A.M.A., *Guides*, the medical adviser opined that appellant had 11 percent impairment of the right arm and no impairment of the left arm. For the right upper extremity, he stated that appellant had 10 percent arm impairment for residual problems with the right shoulder status post right shoulder arthroscopy under Table 15-5, page 403 of the A.M.A., *Guides*. The medical adviser additionally opined that appellant had one percent impairment for residual problems with mild pain/impaired sensation from right C6 radiculopathy. He combined the values and found 11 percent right upper extremity impairment. The medical adviser opined that appellant had zero percent impairment of the left upper extremity.

By decision dated July 13, 2010, OWCP awarded appellant 11 percent right upper extremity impairment. The award ran for the period July 4, 2010 to March 1, 2011, for a period of 34.32 weeks.

LEGAL PRECEDENT

The schedule award provision of FECA 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.⁴ For

² The surgery included subacromial decompression with acromioplasty and release of coracoacromial ligament; debridement of partial-thickness bursal side rotator cuff tear; and Mumford resection of the right distal clavicle.

³ 20 C.F.R. § 10.404.

⁴ *Linda R. Sherman*, 56 ECAB 127 (2004); *Daniel C. Goings*, 37 ECAB 781 (1986).

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.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁷ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁸

FECA does not authorize the payment of schedule awards for the permanent impairment of the whole person.⁹ Payment is authorized only for the permanent impairment of specified members, organs or functions of the body. No schedule award is payable for a member, function or organ of the body not specified in FECA or in the regulations.¹⁰ Because neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine,¹¹ no claimant is entitled to such an award.¹² Amendments to FECA, however, modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a limb even though the cause of the impairment originated in the spine.¹³

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser proving rationale for the percentage of impairment specified.¹⁴

⁵ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* 494-531.

⁸ *Id.* at 521.

⁹ *Ernest P. Govednick*, 27 ECAB 77 (1975); *W.D.*, Docket No. 10-274 (issued September 3, 2010).

¹⁰ *William Edwin Muir*, 27 ECAB 579 (1976); *W.D.*, *id.*

¹¹ FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

¹² *Timothy J. McGuire*, 34 ECAB 189 (1982); *W.D.*, *supra* note 9.

¹³ *Rozella L. Skinner*, 37 ECAB 398 (1986); *W.D.*, *supra* note 9.

¹⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

ANALYSIS

OWCP accepted that appellant sustained work-related injuries that include neck sprain, disorder of bursae and tendons in right shoulder, right wrist sprain, and intervertebral disc disorder with myelopathy, cervical region. It authorized December 14, 2007 right shoulder arthroscopic surgery and a February 17, 2009 C5-6 anterior cervical discectomy and fusion. Appellant requested a schedule award on May 16, 2010 and submitted a report from Dr. Hall.

The Board finds that Dr. Hall's December 14, 2009 report is not sufficient to establish appellant's permanent impairment for schedule award purposes. He did not apply the appropriate edition of the A.M.A., *Guides*, the sixth edition, when evaluating appellant's impairment. As noted the sixth edition became effective on May 1, 2009. Furthermore, Dr. Hall found that appellant had 28 percent impairment of the whole person based on his cervical spine condition. FECA does not provide for impairment ratings of the back, spine or whole person and appellant is not entitled to a schedule award for such ratings.¹⁵ Thus, Dr. Hall's report is insufficient to establish appellant's claim as he did not rate impairment of a scheduled body member pursuant to the sixth edition of the A.M.A., *Guides*.

OWCP granted appellant 11 percent right upper extremity impairment based on the June 7, 2010 report from its medical adviser. The medical adviser stated that appellant's 11 percent right upper extremity impairment was comprised of 10 percent right upper extremity impairment for residual problems with the right shoulder status post right shoulder arthroscopy under Table 15-5, page 403 of the A.M.A., *Guides* and one percent impairment for residual problems with mild pain/impaired sensation from right C6 radiculopathy.

The Board finds that OWCP's medical adviser provided insufficient explanation of his impairment calculation. Regarding residual right shoulder problems after surgery, OWCP's medical adviser did not explain how he determined grade modifiers or how the net adjustment formula was used to determine the final impairment rating. He identified Table 15, page 403 of the A.M.A., *Guides*, which allows 10 percent for a class 1, grade C for a distal clavicle resection. The medical adviser did not provide any reference to or discussion of how he determined grade modifiers used in the net adjustment formula as described in section 15.3 of the sixth edition to reach the appropriate grade within the class of diagnosis.¹⁶ With respect to the right C6 radiculopathy, he failed to identify the table or page in the A.M.A., *Guides* from which any diagnosis-based impairment was taken. The medical adviser listed a grade C impairment within a class 1 diagnosis but he did not specify the diagnosis nor did he address how any grade modifiers were determined with regard to the net adjustment formula. As such, his impairment rating requires further explanation.¹⁷

The Board will remand the case to OWCP to undertake additional development of the medical evidence to appropriately determine if appellant has an additional impairment of the upper extremities for schedule award purposes. On remand, OWCP should request clarification

¹⁵ See *supra* notes 11-13.

¹⁶ A.M.A., *Guides*, *supra* note 7 at 405-09.

¹⁷ See *L.H.*, 58 ECAB 561 (2007) (where impairment has not been correctly described, a new or supplemental evaluation should be obtained in accordance with OWCP procedures).

from its medical adviser and develop the medical evidence as appropriate to determine the extent of permanent impairment due to appellant's accepted employment injury under the sixth edition of the A.M.A., *Guides*. If OWCP's medical adviser is unable to provide such clarification, appellant shall be referred for a second opinion. Following this and such other development as it deems necessary, OWCP shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision. The Board will set aside OWCP's decision and remand the case for further development consistent with the findings herein.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: September 6, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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