

FACTUAL HISTORY

OWCP accepted that on June 14, 2007 appellant, then a 55-year-old motor vehicle operator, sustained a rupture of his right biceps tendon when he tried to break his fall from a tractor trailer cab by hanging onto a safety rail with his right arm.

In a May 12, 2008 report, Dr. Derrik F. Woodbury, an attending Board-certified orthopedic surgeon, indicated that appellant reported that he had some mild chronic aching in his right arm, elbow and shoulder with decreased strength upon lifting and engaging in pronation and supination. He reported findings upon examination and determined that appellant had 17 percent permanent impairment of his right arm under the standards of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).²

On June 20, 2010 appellant filed a claim for a schedule award due to his accepted work injury.

On December 9, 2010 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, determined that appellant's right biceps tendon rupture at his elbow caused him to have seven percent permanent impairment of his right arm as calculated under Table 15-4 on page 399 of the sixth edition of the A.M.A., *Guides*.³ He indicated that the sixth edition of the A.M.A., *Guides* provided a lower impairment rating for the same condition evaluated under the fifth edition of the A.M.A., *Guides*.

In a December 16, 2010 report, Dr. Woodbury reported the findings of his physical examination of appellant. He noted that appellant exhibited loss of strength and endurance from his biceps tendon rupture distally at his elbow. Appellant's main problem was not range of motion but rather was related to aching, decreased strength and decreased endurance in his right elbow, forearm and wrist. Dr. Woodbury stated, "Based on my clinical experience and using the [A.M.A., *Guides*] as a guide it is my impression [appellant] has permanent and partial impairment of 15 percent of his right elbow. This would translate to nine percent of the whole person."

In a January 26, 2011 award of compensation, OWCP granted appellant a schedule award for a seven percent permanent impairment of his right arm. The award ran for 21.84 weeks from May 12 to October 11, 2008. The schedule award was based on the December 9, 2010 opinion of Dr. Harris, who provided an impairment rating under the sixth edition of the A.M.A., *Guides*. OWCP noted that Dr. Woodbury provided an impairment rating of 17 percent of appellant's right arm but pointed out that the rating was made under the fifth edition of the A.M.A., *Guides*.

Appellant requested a review of the written record with an OWCP hearing representative. In a June 7, 2011 decision, the hearing representative set aside the January 26, 2011 award of

² Dr. Woodbury indicated that appellant had 14 percent impairment due to decreased right arm strength and 3 percent impairment due to decreased right arm movement.

³ Dr. Harris indicated that appellant reached maximum medical improvement on May 12, 2008.

compensation and remanded the case to obtain an opinion from Dr. Woodbury on appellant's right arm impairment under the sixth edition of the A.M.A., *Guides*.

In a July 7, 2011 letter, OWCP asked Dr. Woodbury to provide an opinion on appellant's right arm impairment under the sixth edition of the A.M.A., *Guides*. Dr. Woodbury was directed to explain how he arrived at his impairment rating calculation by citing the examination findings, the basis for his calculation and the applicable tables and pages of the sixth edition of the A.M.A., *Guides*.

In an August 21, 2011 report, Dr. Woodbury noted that appellant had returned to his office due to a dispute over his impairment rating. He stated that appellant was standing by his previous evaluation, which he incorrectly stated as being dated "December 16, 2002."⁴ Dr. Woodbury noted that his files did not contain the edition of the A.M.A., *Guides* he previously used in calculating the impairment rating, but noted that it is his custom to use the most recent edition of the A.M.A., *Guides*.

The medical record was again referred to Dr. Harris who was asked to rate the permanent impairment of appellant's right arm and to comment on the impairment rating provided by Dr. Woodbury. Dr. Harris was also asked to thoroughly discuss any points of disagreement between his findings and those of Dr. Woodbury.

In a December 2, 2011 report, Dr. Harris again determined that appellant had seven percent permanent impairment of his right arm under the sixth edition of the A.M.A., *Guides* based on Table 15-4 on page 399 due to his right distal biceps tendon rupture with residual symptoms which included the loss of motion. He disagreed with Dr. Woodbury's rating of 15 percent impairment and commented that Dr. Woodbury did not cite the tables of the A.M.A., *Guides* he used or otherwise explain how he arrived at his calculation.

In a January 24, 2012 decision, OWCP affirmed the June 7, 2011 decision finding that the weight of the medical evidence rested with the opinion of Dr. Harris. It determined that Dr. Woodbury did not explain the bases for his impairment ratings.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the

⁴ The record does not contain any document dated December 16, 2002.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

appropriate standard for evaluating schedule losses.⁷ For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used for evaluating permanent impairment.⁸ A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.⁹

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the elbow, the relevant portion of the arm for the present case, reference is made to Table 15-4 (Elbow Regional Grid) beginning on page 398.¹⁰ After the class of diagnosis is determined from the Elbow Regional Grid, the net adjustment formula is applied using the grade modifiers for functional history, physical examination and clinical studies.¹¹

ANALYSIS

OWCP accepted that appellant sustained a rupture of his right biceps tendon when he tried to break his fall from a tractor trailer cab by hanging onto a safety rail with his right arm. In a January 26, 2011 award of compensation, it granted him a schedule award for a seven percent permanent impairment of his right arm. OWCP based its schedule award on the opinion of Dr. Harris, a Board-certified orthopedic surgeon serving as an OWCP medical adviser. Appellant later claimed that he had a greater level of right arm impairment.

The Board finds that appellant did not submit sufficient medical evidence to show that he has more than a seven percent permanent impairment of his right arm. The Board notes that Dr. Harris properly evaluated appellant's right arm impairment under the relevant standards of the sixth edition of the A.M.A., *Guides*. It was appropriate for Dr. Harris to use the sixth edition of the A.M.A., *Guides* as appellant's schedule award was granted after May 1, 2009, the effective date of the sixth edition.¹² In reports dated December 9, 2010 and December 2, 2011, Dr. Harris indicated that, under Table 15-4 on page 399, appellant fell under the diagnosis-based category of "distal biceps tendon rupture," which has a default value of five percent when residual loss of strength and function with normal motion are present.¹³ He further found that, under the grade modifier scheme, appellant's condition (including loss of arm motion) meant that his impairment rating moved two spaces to the right of the default value on Table 15-4 and equaled a seven percent impairment of the right arm.

⁷ *Id.*

⁸ See FECA Bulletin No. 9-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* is used.

⁹ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

¹⁰ See A.M.A., *Guides* (6th ed. 2009) 398-400.

¹¹ *Id.* at 405-12.

¹² See *supra* note 8.

¹³ See A.M.A., *Guides* 399, Table 15-4.

Appellant argued that he should receive additional schedule award compensation due to the reports of Dr. Woodbury, an attending Board-certified orthopedic surgeon, but these reports do not contain a probative medical opinion showing entitlement to such compensation. In a May 12, 2008 report, Dr. Woodbury determined that appellant had 17 percent permanent impairment of his right arm under the standards of the fifth edition of the A.M.A., *Guides*. However, this report does not show that appellant is entitled to additional schedule award compensation because it does not contain an impairment rating under the appropriate edition of the A.M.A., *Guides*, *i.e.*, the sixth edition. Moreover, Dr. Woodbury did not provide any explanation of what tables he applied or otherwise describe how he arrived at his impairment rating. In a December 16, 2010 report, he stated that appellant had 15 percent impairment of his right elbow and 9 percent impairment of his whole person. Dr. Woodbury did not indicate which edition of the A.M.A., *Guides* he applied or how he calculated the impairment rating. In addition, it is noted that schedule awards are not payable for impairment of the whole person.¹⁴

For these reasons, appellant did not meet his burden of proof to establish that he has more than a seven percent permanent impairment of his right arm, for which he received a schedule award. He 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 did not meet his burden of proof to establish that he has more than a seven percent permanent impairment of his right arm, for which he received a schedule award.

¹⁴ See *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2012 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2012
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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