



## **FACTUAL HISTORY**

On May 20, 2009 appellant, then a 62-year-old precinct commander, was involved in a motor vehicle collision and underwent surgery. OWCP accepted his traumatic injury claim for right elbow and pelvic fractures. The July 23, 2009 statement of accepted facts incorporated these details. OWCP later expanded appellant's claim to include closed right elbow dislocation, closed right upper end radial and ulnar fractures, additional closed right pelvic fractures and right rotator cuff sprain.

In a July 13, 2010 report, Dr. Anthony M. Bevilacqua, an osteopath and Board-certified orthopedic surgeon, related that appellant experienced persistent right upper extremity pain stemming from the May 20, 2009 injury. On examination, he observed positive Neer's, O'Brien's, cross arm, compression, supraspinatus and Hawkins' tests. X-rays exhibited acromioclavicular joint hypertrophy and type II acromion while a magnetic resonance imaging (MRI) scan showed partial thickness supraspinatus tear and superior labral maceration. Dr. Bevilacqua diagnosed right shoulder pain with subacromial bursitis and partial thickness rotator cuff tear.

Appellant filed a claim for a schedule award on August 27, 2010 and submitted medical evidence. A February 4, 2010 report from Brenda E. Craig, a physical therapist, assigned a whole-person impairment rating of 20 percent.<sup>2</sup> In an October 21, 2010 report, Kevin Schrack, a physical therapist, provided a photocopy of Table 15-33 (Elbow/Forearm Range of Motion) on page 474 of the A.M.A., *Guides*.<sup>3</sup> On this photocopy, he circled the following range of motion (ROM) values for the right elbow and forearm: 110 to 130 degrees for flexion, 10 to 40 degrees lag for extension and 70 to 50 degrees for supination. Mr. Schrack determined that appellant sustained a six percent permanent impairment of the right upper extremity or a four percent permanent impairment of the whole person.

On September 28, 2011 Dr. Christopher R. Brigham, an OWCP medical adviser and a Board-certified occupational physician, reviewed the February 4 and October 21, 2010 reports. He noted the accepted conditions as pelvic fracture and right elbow fracture. Dr. Brigham disagreed with both impairment ratings, pointing out that Ms. Craig utilized an outdated edition of the A.M.A., *Guides*, Mr. Schrack did not provide objective findings to support his ROM values, and a physical therapist was not a qualified physician for the purpose of determining impairment. Following a review of the July 23, 2009 statement of accepted facts<sup>4</sup> and the medical file, Dr. Brigham applied Table 15-4 (Elbow Regional Grid) of the A.M.A., *Guides* and assigned an impairment class (CDX) of 1 with a default grade of C, or three percent permanent impairment, for functional loss due to right elbow fracture.<sup>5</sup> He selected a grade modifier value of 2 for Functional History (GMFH), citing pain and other symptoms with normal activity.<sup>6</sup>

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<sup>2</sup> Ms. Craig's rating was based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*). See *infra* note 3.

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>4</sup> This statement of accepted facts listed the only accepted conditions as pelvic fracture and right elbow fracture.

<sup>5</sup> *Id.* at 399.

<sup>6</sup> *Id.* at 406. Dr. Brigham determined that grade modifiers for Physical Examination (GMPE) and Clinical Studies (GMCS) were inapplicable.

Using the net adjustment formula of (GMFH - CDX), or (2 - 1), Dr. Brigham calculated a net adjustment of 1. He concluded that appellant had a class 1, grade D impairment of the right upper extremity, which amounted to a rating of four percent. Dr. Brigham listed May 20, 2010 as the date of maximum medical improvement.

By decision dated November 8, 2011, OWCP granted a schedule award for four percent permanent impairment of the right upper extremity for the period May 20 to August 15, 2011.

Appellant requested reconsideration on November 16, 2011. By decision dated November 23, 2011, OWCP denied appellant's request for reconsideration on the grounds that he did not present new evidence or legal contentions warranting further merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA and its implementing regulations 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.<sup>7</sup> 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 appropriate standard for evaluating schedule losses.<sup>8</sup>

The A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). For upper extremity impairments, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>9</sup> Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

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

OWCP accepted that appellant sustained right radial, ulnar, elbow, and pelvic fractures, right elbow dislocation and sprained right rotator cuff as a result of a May 20, 2009 motor vehicle collision on the job. Appellant thereafter filed an August 27, 2010 claim for a schedule award and furnished February 4 and October 21, 2010 impairment rating reports from Ms. Craig and Mr. Schrack, respectively. To support a claim for a schedule award, an employee must submit an impairment rating from a qualified physician that is in accordance with the A.M.A.,

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<sup>7</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>8</sup> *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

<sup>9</sup> *R.Z.*, Docket No. 10-1915 (issued May 19, 2011).

<sup>10</sup> *J.W.*, Docket No. 11-289 (issued September 12, 2011).

*Guides*.<sup>11</sup> A physical therapist, however, is not a physician as defined by FECA and is not competent to rate impairment of a scheduled member or otherwise render a medical opinion.<sup>12</sup> Because both Ms. Craig and Mr. Schrack are physical therapists, their ratings lacked evidentiary weight.<sup>13</sup>

Although the reports of Ms. Craig and Mr. Schrack are not those of a physician, OWCP chose to have a physician, Dr. Brigham, an OWCP medical adviser, review their findings. The case was routed to Dr. Brigham for an opinion concerning the nature and percentage of impairment.<sup>14</sup> In a September 28, 2011 report, he reviewed the July 23, 2009 statement of accepted facts and the medical evidence and determined that the rating scheme outlined in Table 15-4 of the A.M.A., *Guides* was appropriate. Dr. Brigham assigned a default impairment rating of three percent for functional loss due to right elbow fracture, which was adjusted to four percent on account of appellant's complaints of pain with normal activity. OWCP subsequently granted a schedule award for four percent permanent impairment of the right upper extremity based on this opinion.

When OWCP's medical adviser, a second opinion specialist, or a referee physician renders a medical opinion based on an incomplete or inaccurate statement of accepted facts or that does not use the statement of accepted facts as the framework in forming the opinion, the probative value of the opinion is diminished or negated altogether.<sup>15</sup> In this case, Dr. Brigham relied on the July 23, 2009 statement of accepted facts, which listed only right elbow and pelvic fractures as accepted conditions. The statement, however, did not include closed right elbow dislocation, and right rotator cuff sprain. OWCP procedures specify that the statement of accepted facts must include all accepted conditions.<sup>16</sup> The Board finds that Dr. Brigham's opinion is of diminished probative value as it was not based on an accurate factual framework.<sup>17</sup>

The case will be remanded for OWCP to prepare a new statement of accepted facts and obtain a rationalized medical opinion based upon a complete and accurate factual background

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<sup>11</sup> *James Robinson, Jr.*, 53 ECAB 417 (2002).

<sup>12</sup> *See id.* *See also* 5 U.S.C. § 8101(2).

<sup>13</sup> The Board notes additional deficiencies. First, Ms. Craig failed to utilize the proper edition of the A.M.A., *Guides*. *See supra* note 8. *See also James Kennedy, Jr.*, 40 ECAB 620, 627 (1989) (an opinion that is not based upon standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of permanent impairment). Second, while both reports presented whole person impairment ratings, FECA does not authorize schedule awards for loss of the body as a whole. *J.Q.*, 59 ECAB 366 (2008). Finally, neither Ms. Craig nor Mr. Schrack offered a reasoned explanation as to the percentage of permanent impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(a)-(c) (January 2010).

<sup>14</sup> *B.P.*, Docket No. 11-800 (issued March 1, 2010); *L.T.*, Docket No. 10-2228 (issued August 1, 2011). *See also* Federal (FECA) Procedure Manual, *supra* note 13 at Chapter 2.808.6(d).

<sup>15</sup> *A.R.*, Docket No. 11-692 (issued November 18, 2011).

<sup>16</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3(a)(4) (October 1990). *See also B.P.*, *supra* note 14.

<sup>17</sup> *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

from a Board-certified specialist as to whether appellant sustained more than a four percent permanent impairment of the right upper extremity. After conducting such further development as deemed necessary, OWCP shall issue an appropriate merit decision.<sup>18</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 8, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: July 6, 2012  
Washington, DC

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

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

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

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<sup>18</sup> In light of the Board's disposition of the first issue, the second issue is moot.