

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**G.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Tampa, FL, Employer**

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**Docket No. 11-1978  
Issued: June 25, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

On September 8, 2011 appellant filed an application for review of an August 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for an increased schedule award.<sup>1</sup> The appeal was docketed as No. 11-1978. Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision.

This case has previously been before the Board. In an order dated May 20, 2010, the Board set aside OWCP's April 3 and July 6, 2009 decisions denying appellant's request for an increased schedule award. The Board found the case was not in posture for a decision due to the failure of the district medical adviser (DMA) and OWCP's hearing representative to calculate appellant's schedule award entitlement pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The case was remanded for a proper assessment of the medical evidence.<sup>2</sup> In an order dated August 12, 2011, the Board set aside OWCP's June 9, 2010 decision denying a request for an increased

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<sup>1</sup> OWCP accepted appellant's December 8, 2004 traumatic injury claim for right shoulder strain, cervical displacement, cervical spondylosis and depressive and anxiety disorders. On March 7, 2006 it granted a schedule award for a 14 percent permanent impairment of the right upper extremity.

<sup>2</sup> Docket No. 09-1898 (issued May 20, 2010).

schedule award. The Board again found the case was not in posture for a decision due to the failure of the district medical adviser (DMA) and OWCP's hearing representative to fully address the medical evidence of record reflecting the current status of all accepted conditions according to the sixth edition of the A.M.A., *Guides*. The case was remanded for a complete assessment of appellant's upper extremity impairment.<sup>3</sup> The facts contained in the Board's previous orders are incorporated herein by reference.

On remand, OWCP referred appellant to Dr. William Dinenberg, a Board-certified orthopedic surgeon, for a second opinion examination and an opinion as to whether he had additional permanent impairment of his right upper extremity.<sup>4</sup> In a July 11, 2011 report, Dr. Dinenberg provided detailed examination findings, including positive impingement sign in the right shoulder. He diagnosed cervical herniated nucleus pulposus, with complaints of right upper extremity (RUE) radiculopathy and decreased sensation of the right small and ring finger. Dr. Dinenberg opined that appellant had a two percent permanent impairment of the RUE according to Table 15-21 at page 444 of the sixth edition of the A.M.A., *Guides*.<sup>5</sup>

OWCP forwarded the case to the DMA for a review. In a report dated August 24, 2011, the DMA opined that appellant was not entitled to an increased schedule award. Referring to a July/August 2009, *The Guides* Newsletter (*Rating Spinal Nerve Extremity Impairment*), the DMA indicated that a schedule award is appropriate only when a claimant has extremity impairment due to spinal nerve root deficit.<sup>6</sup> He opined that Dr. Dinenberg had incorrectly concluded that appellant had a two percent impairment based on the ulnar palmar digital nerve, which is a peripheral nerve, but had not identified a spinal root nerve. The DMA concluded that there was no objective evidence of radiculopathy and, therefore, no basis for an increased schedule award. In a decision dated August 25, 2011, OWCP denied appellant's request for an increased schedule award based on the DMA's recommendation.

The Board finds that the medical evidence of record does not comport with the A.M.A., *Guides* or provide a complete analysis of appellant's upper extremity impairment. As the Board stated in its prior order, OWCP was required to calculate appellant's entitlement to an increased schedule award pursuant to the sixth edition of the A.M.A., *Guides*.<sup>7</sup> However, neither the claims examiner nor the DMA, upon whose report he relied, addressed the medical evidence of

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<sup>3</sup> Docket No. 11-190 (issued August 12, 2011).

<sup>4</sup> The record also contains a February 6, 2009 second opinion report from Dr. Dinenberg.

<sup>5</sup> Dr. Dinenberg stated that appellant had a class 1 impairment, moderate sensory deficit, pursuant to the ulnar palmar digital nerve. He gave a grade modifier 3 for functional history and grade modifier 1 for clinical studies, resulting in a 2 percent permanent impairment of the RUE.

<sup>6</sup> OWCP procedures provide a specific methodology for rating spinal nerve extremity impairment. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010). It was designed to be used when a particular jurisdiction mandated ratings for extremities and precluded ratings for the spine. *Id.*

<sup>7</sup> Effective May 1, 2009, OWCP was required to begin applying the sixth edition of the A.M.A., *Guides* in calculating schedule awards.<sup>7</sup> See FECA Bulletin No. 09-03 (issued March 15, 2008). A claimant who has received a schedule award calculated under a previous edition and who claims an increased award, will receive a calculation according to the sixth edition for any decision issued on or after May 1, 2009. *Id.*

record reflecting the current status of all accepted conditions in light of provisions of the sixth edition of the A.M.A., *Guides*.<sup>8</sup>

The DMA provided a cursory review of Dr. Dinenberg's July 11, 2011 report. Referring to the July/August 2009 Guides Newsletter, he concluded that there was no objective evidence of radiculopathy and, therefore, no basis for an additional impairment rating. He did not, however, address appellant's accepted shoulder condition or the evidence of record relating to appellant's diagnosed radiculopathy, including a previous second opinion report from Dr. Dinenberg dated February 6, 2009 and reports from appellant's treating physician. He relied on Dr. Dinenberg's failure to identify a spinal nerve root as the sole basis for his opinion.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>9</sup> Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>10</sup> In this case, OWCP began to develop the evidence by seeking a second opinion from Dr. Dinenberg as to whether appellant had additional permanent impairment. It then routed the case to the DMA for review. It failed, however, to seek clarification as to whether appellant's diagnosed radiculopathy could be traced to a spinal nerve root. Without such information, an informed decision cannot be reached on the relevant schedule award issue.<sup>11</sup>

The Board finds that this case is not in posture for a decision. The medical evidence of record does not comport with the A.M.A., *Guides* or provide a complete analysis of appellant's upper extremity impairment. The case will be remanded for further development of the medical evidence, including a request for a supplemental report from Dr. Dinenberg seeking clarification on the issues addressed herein, and an opinion from the DMA as to whether appellant is entitled to an increased schedule award pursuant to the A.M.A., *Guides*. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

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<sup>8</sup> The sixth edition of 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). A.M.A., *Guides* (6<sup>th</sup> ed. 2008), section 1.3, p. 3. Under the sixth edition of the A.M.A., *Guides*, for upper extremity impairments the evaluator identifies 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). *Id.* at 385-419. The net adjustment formula is (GMFH-CDX) + (GMPE - CDX) + (GMCS - CDX). *Id.* at 411

<sup>9</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>10</sup> *Richard F. Williams*, 55 ECAB 343, 346 (2004).

<sup>11</sup> Appellant's prior receipt of a schedule award for a 14 percent impairment of his shoulder does not preclude his right to seek and additional award based on new medical evidence. A claimant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Tommy R. Martin*, 56 ECAB 273 (2005).

**IT IS HEREBY ORDERED THAT** the Office Workers' Compensation Programs' August 25, 2011 decision be set aside, and the case is remanded for further development consistent with this order.

Issued: June 25, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board