



## **FACTUAL HISTORY**

On March 20, 2002 appellant, then 58-year-old letter carrier filed an occupational disease claim alleging a frozen shoulder and rotator cuff tear in the performance of duty. OWCP accepted his claim for right shoulder rotator cuff tear and frozen right shoulder. Appellant received compensation and underwent right shoulder debridement and reconstruction on May 1, 2002, subacromial decompression and reconstruction of complete cuff avulsion on January 18, 2006, subacromial decompression and rotator cuff repair on January 27, 2006 and latissimus dorsi transfer with rotator cuff repair on January 30, 2008.

On November 6, 2008 appellant claimed a schedule award. In an April 30, 2009 report, Dr. Daniel Mass, a Board-certified orthopedic surgeon, opined that appellant had 51 percent right arm impairment due to pain, limited motion and other unspecified factors.<sup>2</sup> In a June 22, 2009 report, an OWCP medical adviser opined that appellant had 33 percent right arm impairment due to lost range of motion. In a July 21, 2009 decision, OWCP granted a schedule award for 33 percent permanent impairment of the right arm.

Appellant requested reconsideration on May 12, 2010 and submitted additional evidence. In an April 7, 2010 impairment rating, Dr. Charles Carroll, a Board-certified orthopedic surgeon, examined appellant and provided range of motion (ROM) findings. He found that appellant had 30 percent impairment due to lost range of motion comprised of 30 degrees of flexion, 20 degrees of extension, 20 degrees of abduction, 10 degrees of adduction and external rotation and 5 degrees of internal rotation. Dr. Carroll also found 30 percent impairment based on manual muscle testing. He utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001) and opined that she had 60 percent impairment of the right upper extremity.

In a May 31, 2010 report, an OWCP medical adviser noted that Dr. Carroll rated impairment for lost motion and weakness. He discounted Dr. Carroll's rating as it was made under the fifth edition of the A.M.A., *Guides* and combined more than one rating method. The medical adviser stated that, under the sixth edition of the A.M.A., *Guides*, range of motion impairment was stand alone and could not be combined with other rating methods.

In a June 9, 2010 decision, OWCP denied modification of its prior decision.

Appellant requested reconsideration on May 31, 2011. In an April 14, 2011 report, Dr. Mass completed an impairment rating worksheet and provided physical examination findings. He noted that the impairment was based upon the fifth edition of the A.M.A, *Guides*. Regarding ROM, Dr. Mass noted that appellant had zero degrees of flexion, zero degrees of extension, zero degrees of abduction, zero degrees of adduction, zero degrees of internal rotation, zero degrees of external rotation and zero degrees of extension.

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<sup>2</sup> Dr. Mass attributed 31 percent of appellant's impairment to lost range of shoulder motion. He stated that she had 10 degrees of forward elevation, 20 degrees of backward elevation, 10 degrees of abduction, 40 degrees of adduction, 50 degrees of internal rotation, 30 degrees of external rotation and 30 degrees of extension.

In a May 30, 2011 statement, appellant referred to her April 7, 2010 impairment rating from Dr. Carroll. He indicated that she had 60 percent rating under the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). Appellant further noted that her request was made in January 2009 and requested that she receive an award under the fifth edition of the A.M.A., *Guides*.

In an August 22, 2011 report, OWCP's medical adviser noted appellant's history of injury and treatment. He noted that the new report from Dr. Mass indicated that appellant had zero degrees of motion in each and every plane. OWCP's medical adviser explained that, if this were "true, it would be consistent with a completely ankylosed shoulder. Unfortunately, the most recent ROM impairment is not consistent with his previous remarks nor is it in line with testimony made by Dr. Carroll or the physical therapists in their ratings." OWCP's medical adviser opined that it was more likely true than not, given the previous testimony that "while appellant's shoulder range of motion was diminished, it was not completely ankylosed and some movement exists." He concluded that appellant did not have any additional impairment and reached maximum medical improvement on November 3, 2008.

In an August 30, 2011 decision, OWCP denied modification of the prior schedule award decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>3</sup> and its implementing federal regulations,<sup>4</sup> 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>6</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for right shoulder rotator cuff tear and frozen right shoulder. However, the evidence of record is insufficient to establish that she has more than 33 percent impairment of the right upper extremity for which she received a schedule award.

In an April 14, 2011 report, Dr. Mass completed an impairment rating worksheet and provided physical examination findings. Regarding ROM, he noted that appellant had zero degrees of flexion, zero degrees of extension, zero degrees of abduction, zero degrees of adduction, zero degrees of internal rotation, zero degrees of external rotation, and zero degrees of extension. The Board notes that he utilized the fifth edition of the A.M.A., *Guides* and did not

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* at § 10.404(a).

<sup>6</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

provide any opinion regarding the extent of impairment. Dr. Mass did not provide findings that correlated with the sixth edition of the A.M.A., *Guides* to establish a ratable permanent impairment due to the accepted conditions. He also did not provide any reasoning for why he found that appellant had no motion in her right shoulder in view of his April 30, 2009 report in which he noted limited movement in all planes of motion. Dr. Mass' opinion is of diminished probative value as he did not use the sixth edition of the A.M.A., *Guides* or explain the discrepancy in his range of motion findings between April 30, 2009 and April 14, 2011 reports.

Appellant also referred to the April 7, 2010 report of Dr. Carroll, who opined that she had a 60 percent impairment of the upper extremity. Dr. Carroll's report is of limited value as he also utilized the fifth edition of the A.M.A., *Guides* to rate impairment. As noted, for decisions issued after May 1, 2009, the sixth edition is to be used.<sup>7</sup> Dr. Carroll rated impairment for lost range of motion and for weakness. However, the sixth edition of the A.M.A., *Guides* provides that, if a range of motion rating is appropriate, it is to be used as a stand-alone rating.<sup>8</sup> Board precedent is well settled that when an attending physician's report gives an estimate of impairment but does not address how the estimate is based upon the A.M.A., *Guides*, OWCP may follow the advice of its medical adviser or consultant where he or she has properly applied the A.M.A., *Guides*.<sup>9</sup>

In an August 22, 2011 report, OWCP's medical adviser reviewed the medical evidence and noted that Dr. Mass suggested that appellant had zero degrees of motion in all plans. He noted this would be consistent with a completely ankylosed shoulder; however, such a finding was inconsistent with the previous range of motion findings made by Dr. Mass as well as the findings of Dr. Carroll. The medical adviser explained that it was more likely that appellant's shoulder range of motion was diminished and not completely ankylosed. He concluded that appellant did not establish any additional impairment.

The Board finds that the medical evidence does not establish that appellant has more than a 33 percent impairment of the right upper extremity for which she received a schedule award. Consequently, OWCP properly denied her claim for an increased schedule award.

On appeal, appellant generally disagreed with the amount of her schedule award. She contends that her claim was delayed and that she should have received an award under the fifth edition. The Board finds that there is no evidence of record that OWCP processed her claim improperly. In *Harry D. Butler*,<sup>10</sup> 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.<sup>11</sup> On March 15, 2009 the Director

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<sup>7</sup> See *supra* note 5.

<sup>8</sup> A.M.A., *Guides* 461 (6<sup>th</sup> ed. 2009).

<sup>9</sup> *J.Q.*, 59 ECAB 366 (2008); *Laura Heyen*, 57 ECAB 435 (2006).

<sup>10</sup> 43 ECAB 859 (1992).

<sup>11</sup> *Id.*

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*.<sup>12</sup> 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.

Appellant 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 her burden of proof in establishing that she has more than a 33 percent impairment of the right arm for which she received a schedule award.

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' August 30, 2011 decision is affirmed.

Issued: June 11, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>12</sup> FECA Bulletin No. 09-03 (issued March 15, 2009). FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).