

FACTUAL HISTORY

On March 30, 2006 appellant, then a 59-year-old painter, sustained an injury to his left arm while repairing a light fixture in the performance of duty. He did not stop work. OWCP accepted the claim for left rotator cuff syndrome and cervical radiculopathy.² Appellant sustained a recurrence of total disability on November 16, 2007 and underwent authorized left shoulder arthroscopic rotator cuff repair on May 13, 2008. He stopped work at that time and reviewed wage-loss compensation.

Appellant filed a Form CA-7 claim for a schedule award on December 17, 2010. In a January 6, 2011 report, Dr. Hernan Jimenez, a Board-certified internist, noted appellant's history of injury and treatment. He determined that appellant had a 22 percent whole person impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008) (hereinafter, A.M.A., *Guides*). Dr. Jimenez found a left arm impairment of one percent and a range of motion impairment of 18 percent for both the right and left arms.

On January 24, 2011 OWCP referred the medical record to an OWCP medical adviser for an opinion on permanent impairment. It listed the accepted conditions as left shoulder bursae and tendons. In a January 28, 2011 report, the medical adviser noted appellant's history and reviewed the A.M.A., *Guides*. He utilized findings for range of motion, noting that it was a stand-alone method not to be combined with other factors and concluded that appellant had an 18 percent impairment of the left arm. The medical adviser stated that he was unable to find a "source document" in the record.

By decision dated February 3, 2011, OWCP granted appellant a schedule award for 18 percent permanent impairment of the left arm. The period of the award ran from December 28, 2010 to January 25, 2012, a total of 56.16 weeks.

On February 14, 2011 appellant requested a telephonic hearing, which was held on June 10, 2011. In a June 24, 2011 report, Dr. Jimenez opined that appellant's condition included limited range of motion at the level of the cervical spine with occasional radicular symptoms into the shoulders. He advised that appellant had notable cervical spondylitic changes that were likely the cause of his radicular symptoms. Dr. Jimenez also found that appellant had bilateral acromioclavicular joint osteoarthritic changes with notable loss of range at the shoulder joints, particularly on the left. He provided range of motion measurements for both shoulders, to include external rotation of 45 degrees on the right and left and flexion of 100 degrees on the right and 85 degrees on the left. Dr. Jimenez opined that appellant had an 18 percent impairment of the left upper extremity per the A.M.A., *Guides*. He advised that appellant also had cervical radicular symptoms and lumbar-related symptoms resulting from his spondylitic changes.

On September 6, 2011 OWCP's hearing representative vacated OWCP's February 3, 2011 decision. He noted that OWCP's medical adviser was not informed that appellant had accepted cervical radiculopathy and had stated that he could not find a source document

² OWCP also accepted that appellant sustained left rotator cuff syndrome on November 16, 2007, in claim File No. xxxxxx384. This claim was doubled with the claim presently before the Board, claim File No. xxxxxx665.

describing impairment. The hearing representative directed clarification on whether appellant had more than 18 percent impairment of the left arm and whether he had any right arm impairment due to his accepted conditions.

On September 9, 2011 OWCP listed the accepted conditions as brachial neuritis or radiculitis and left shoulder bursae and tendons. In a September 12, 2011 report, the medical adviser reviewed appellant's history of injury and treatment and determined that there was nothing of record to support a true spinal nerve root deficit or radiculopathy. He explained that range of motion methodology was a stand-alone method and could not be combined with any other methodology of impairment assessment. The medical adviser also explained that the limitation of motion of the right shoulder was not due to a radiculopathy. He opined that it was "medically probable to be related to the 'bursitis (and tendons)' problem in the [left] shoulder. The [right] shoulder is not included in the accepted conditions."

By decision dated October 24, 2011, OWCP denied appellant's claim for an additional schedule award. It found that the medical evidence did not support greater permanent impairment.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing federal regulations⁴ 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.⁵ For decisions issued after May 1, 2009, the sixth edition will be used.⁶

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁷ The A.M.A., *Guides* at section 15.7 provides:

"Range of motion should be measured after a warm up, in which the individual moves the joint through its maximum range of motion at least three times. The range of motion examination is then performed by recording the active measurements from three separate range of motion efforts. All measurements should fall within 10 degrees of the mean of these three measurements. The

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁷ *Veronica Williams*, 56 ECAB 367, 370 (2005).

maximum observed measurement is used to determine the range of motion impairment.”⁸

ANALYSIS

The Board finds this case is not in posture for decision.

OWCP accepted that appellant sustained left rotator cuff syndrome and cervical radiculopathy. He underwent left shoulder surgery on May 13, 2008. OWCP’s medical adviser relied upon the clinical findings contained in Dr. Jimenez June 24, 2011 report in making the impairment determination.

Dr. Jimenez in his June 24, 2011 report, concluded that appellant had an 18 percent upper extremity permanent impairment according to the A.M.A., *Guides*. However, there is no indication that measured range of motion three times after a warm up and then utilized the average of the measurements as required by section 15.7 of the A.M.A., *Guides*.⁹ The Board also noted that Dr. Jimenez advised that appellant had cervical radicular symptoms and lumbar-related symptoms resulting from his spondylitic changes and requested that OWCP consider these symptoms. While OWCP considered these symptoms, Dr. Jimenez did not explain how these were related to the accepted condition or caused impairment. As noted, the claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁰

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*.¹¹

The Board notes that OWCP’s medical adviser’s report did not properly apply the A.M.A., *Guides* as his report is based upon the flawed report of Dr. Jimenez. The medical adviser submitted a September 12, 2011 report following the assessment formula of the sixth edition of the A.M.A., *Guides*. He utilized Dr. Jimenez clinical findings for range of motion and found appellant had reached maximum medical improvement and had 18 percent impairment, but Dr. Jimenez did not follow the appropriate procedure with regards to measuring range of motion.¹² Therefore, this report is of limited probative value. It is also not clear if the medical adviser was aware of appellant’s accepted left rotator cuff syndrome for which he underwent surgery on May 13, 2008. OWCP’s September 9, 2011 memorandum to the medical adviser

⁸ A.M.A., *Guides* 464.

⁹ *Id.*

¹⁰ *Supra* note 7. The Board also notes that OWCP has not accepted a lumbar spine condition.

¹¹ *J.Q.*, 59 ECAB 366 (2008); *Laura Heyen*, 57 ECAB 435 (2006).

¹² *See supra* note 7.

only listed accepted conditions as brachial neuritis or radiculitis and left shoulder bursae and tendons.

It is well established that proceedings under FECA are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ Accordingly, once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a proper manner.¹⁴ The report from Dr. Jimenez and OWCP's medical adviser are insufficient to resolve the issue of whether appellant was entitled to an additional schedule award; OWCP did not properly discharge its responsibilities in developing the record.¹⁵ The Board, therefore, finds that the case must be remanded for further development of the medical evidence and a reasoned opinion regarding whether appellant has additional permanent impairment of the upper extremities due to his accepted employment injuries. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹³ *Richard E. Simpson*, 55 ECAB 490 (2004).

¹⁴ *Melvin James*, 55 ECAB 406 (2004).

¹⁵ *Richard F. Williams*, 55 ECAB 343 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2011 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this decision.

Issued: June 21, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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