



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> In a January 12, 2012 decision, the Board affirmed an OWCP March 9, 2011 decision which found that appellant failed to establish that he was entitled to 16 hours of wage-loss compensation on January 7, 10, 12 and 21, 2011 due to home physical therapy causally related to his accepted employment injury. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The facts and the history relevant to the present appeal are hereafter set forth.

OWCP accepted that on March 4, 2010 appellant, then a 39-year-old police officer instructor, sustained an acromioclavicular (ACL) sprain of the left shoulder while training at the employing establishment's law enforcement training center. It authorized left shoulder arthroscopic release surgeries on August 4 and December 22, 2010 by Dr. J. Michael Kioschos, an attending Board-certified orthopedic surgeon.

On June 16, 2011 appellant filed a claim for a schedule award.

In a June 9, 2011 medical report, Dr. Kioschos stated that appellant was six months post left shoulder arthroscopic intracapsular and extracapsular release and debridement. Appellant was a little stronger than his last visit but still had limitations. He had successfully handcuffed an individual the prior day at the employing establishment but experienced pain. On physical examination, Dr. Kioschos reported near symmetric cuff strength. Active elevation was variable depending on the plane of elevation. External rotation was also variable. Dr. Kioschos advised that appellant was status post left subacromial decompression, distal clavicle excision and superior labrum anterior and posterior (SLAP) repair. He reached maximum medical improvement on the date of examination. Appellant could return to his regular work duties without restrictions. Dr. Kioschos determined that he had five percent impairment of the left arm or three percent impairment of the whole person based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On June 22, 2011 Dr. Howard P. Hogshead, an OWCP medical adviser Board-certified in orthopedic surgery, reviewed the medical record and appellant's August and December 2010 left shoulder surgeries. He advised that appellant reached maximum medical improvement on June 9, 2011. Dr. Hogshead stated that Dr. Kioschos failed to provide an explanation for his opinion that appellant had five percent impairment of the left upper extremity. He noted that the sixth edition of the A.M.A., *Guides* recommended that only one condition in a region could be used for impairment. This would clearly be the ACL strain which would be used in appellant's best interest. Dr. Hogshead utilized the Shoulder Regional Grid, Table 15-5, A.M.A., *Guides* 403 and determined that appellant had a class 1 impairment with a grade C default value of three percent. He assessed a grade 1 modifier each for Functional History (GMFH)<sup>3</sup> and Physical Examination (GMPE).<sup>4</sup> Dr. Hogshead noted that a grade modifier for Clinical Studies (GMCS) was not applicable based on appellant's surgeries. He determined that the net adjustment for the

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<sup>2</sup> Docket No. 11-1159 (issued January 12, 2012).

<sup>3</sup> A.M.A., *Guides* 406, Table 15-7.

<sup>4</sup> *Id.* at 408, Table 15-8.

above modifiers equaled zero. Dr. Hogshead concluded that appellant had three percent impairment of the left upper extremity.

By letter dated July 25, 2011, OWCP requested that Dr. Kioschos submit a report as to when appellant attained maximum medical improvement and a detailed description of the impairment and a schedule award rating according to the sixth edition of the A.M.A., *Guides*.

OWCP received duplicate copies of Dr. Kioschos' December 22, 2010 and June 9, 2011 reports.

In an August 30, 2011 decision, OWCP granted appellant a schedule award for three percent impairment of the left upper extremity. The award ran for the period June 10 to August 4, 2011.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>5</sup> and its implementing federal regulations,<sup>6</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>7</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>8</sup> For decisions issued after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>9</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>10</sup>

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>11</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>12</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for a left shoulder sprain. On August 30, 2011 appellant received a schedule award for three percent impairment of the left upper extremity.

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Ausbon N. Johnson*, 50 ECAB 304 (1999).

<sup>8</sup> *Supra* note 6.

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>10</sup> *Id.* at Chapter 3.700, Exhibit 1 (January 2010).

<sup>11</sup> A.M.A., *Guides* 494-531.

<sup>12</sup> *Id.* at 521.

The Board finds that he did not meet his burden of proof to establish that he sustained greater impairment.

On June 9, 2011 appellant's attending physician, Dr. Kioschos, opined that appellant had reached maximum medical improvement. He based his opinion on findings of near symmetric cuff strength and variable active elevation and external rotation. Dr. Kioschos determined that appellant had five percent impairment of the left upper extremity and three percent impairment of the whole person under the sixth edition of the A.M.A., *Guides*. He concluded that appellant could return to his regular work duties with no restrictions. The Board finds that this report is not sufficient to constitute the weight of the medical opinion evidence for schedule award purposes as Dr. Kioschos did not explain his finding with reference to tables in the sixth edition of the A.M.A., *Guides*. Further, the Board notes that FECA does not authorize schedule awards for loss of use of the body as a whole.<sup>13</sup>

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment and OWCP may rely on the opinion of its OWCP medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.<sup>14</sup> Dr. Hogshead, the medical adviser, reviewed the medical record and found that appellant had three percent impairment of the left upper extremity.<sup>15</sup> He also found that appellant reached maximum medical improvement on June 9, 2011. Dr. Hogshead correctly stated that Dr. Kioschos failed to provide an explanation for his opinion that appellant had five percent impairment of the left upper extremity. He utilized the Shoulder Regional Grid, Table 15-5, A.M.A., *Guides* 403 and determined that appellant had a class 1 impairment with a grade C default value of three percent. Dr. Hogshead found a grade 1 modifier for functional history and physical examination. He stated that a grade modifier for clinical studies was not applicable. Utilizing the net adjustment formula discussed above, Dr. Hogshead found that GMFH-CDX + GMPE-CDX or  $(1-1) + (1-1) = \text{zero}$ . As there was no net adjustment he opined that appellant had three percent impairment of the left upper extremity.

The Board finds that Dr. Hogshead properly applied the sixth edition of the A.M.A., *Guides* to the clinical findings of Dr. Kioschos, to rate impairment of appellant's left upper extremity. The weight of medical evidence rests with his opinion and establishes the extent of permanent impairment in this case.

On appeal, appellant asserted that he had more than three percent impairment of his left upper extremity. The issue in this claim is medical in nature and must be resolved by the submission of probative medical evidence.<sup>16</sup> Appellant did not submit sufficiently rationalized medical evidence addressing the extent of his permanent impairment. Dr. Kioschos' report failed to provide an explanation for his five percent left upper extremity impairment rating under

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<sup>13</sup> *D.A.*, Docket No. 10-2172 (issued August 3, 2011); *J.Q.*, 59 ECAB 366 (2008).

<sup>14</sup> *J.B.*, Docket No. 09-2191 (issued May 14, 2010); *see also* A.M.A., *Guides* 521.

<sup>15</sup> The Board notes that it is appropriate for an OWCP medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. *See* Federal (FECA) Procedure Manual, *supra* note 7, Chapter 3.700.3 (January 2010).

<sup>16</sup> *See Jaja K. Asaramo*, 55 ECAB 200, 206 (2004).

the sixth edition of the A.M.A., *Guides*. As stated, the whole person impairment rating is not allowed for a schedule award under FECA.<sup>17</sup> Dr. Hogshead provided a left upper extremity impairment rating in conformance with the A.M.A., *Guides* and based on Dr. Kioschos' findings. His report is sufficient to establish that appellant had no more than three percent impairment of the left upper extremity.

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 has failed to establish that he has more than three percent impairment of the left upper extremity, for which he received a schedule award.

### **ORDER**

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

Issued: June 21, 2012  
Washington, DC

Colleen Duffy Kiko, 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>17</sup> See cases cited, *supra* note 11.