

repetitive activity in her federal employment. OWCP accepted the claim for left medial and lateral epicondylitis.

In a report dated March 9, 2011, Dr. Frank Norberg, an attending orthopedic surgeon, provided a history and results on examination. He reported that there was no numbness or tingling, with normal gait, balance, grip strength, pinch strength, finger abduction and adduction strength. Dr. Norberg diagnosed status post debridement of medial epicondylitis and status post plasma injection for lateral epicondylitis. He stated that appellant “would have two percent rating on the workers’ compensation schedule under 5223.0120, Subpart 3(g) for debridement of medial epicondylitis.”

By report dated November 21, 2011, an OWCP medical adviser noted that Dr. Norberg had identified what appeared to be a state workers’ compensation statute. He noted the results on examination reported by Dr. Norberg and opined that, given the lack of significant objective findings, appellant did not have a permanent impairment to the left arm.

In a decision dated December 16, 2011, OWCP found the evidence was insufficient to establish entitlement to a schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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 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.⁴ The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁶

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁵ *Supra* note 3.

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

ANALYSIS

The Board notes that the only decision on the current appeal is dated December 16, 2011.⁷ The medical evidence from Attending Physician Dr. Norberg regarding a permanent impairment was a March 9, 2011 report. Dr. Norberg provided brief examination results and referred to an impairment based on “debridement of medial epicondylitis.” The medical evidence necessary to support a schedule award includes a physician’s report that provides a detailed description of the impairment.⁸ Dr. Norberg did not provide a detailed description of the impairment. In addition, the Board has held that a medical report that does not describe the basis for the impairment rating or refer to specific tables in the A.M.A., *Guides* is of diminished probative value.⁹ Dr. Norberg appeared to refer to a state workers’ compensation statute without discussing the A.M.A., *Guides* or otherwise describing the basis for an impairment under FECA. OWCP’s medical adviser noted the normal examination results and opined that appellant did not have a ratable permanent impairment.

The Board finds that the medical evidence of record prior to December 16, 2011 was not sufficient to establish a schedule award under 5 U.S.C. § 8107. There was no probative medical evidence supporting an employment-related permanent impairment under the A.M.A., *Guides*. Appellant may request a schedule award based on evidence submitted after December 16, 2011 showing a permanent impairment under the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has not established entitlement to a schedule award pursuant to 5 U.S.C. § 8107.

⁷ The record indicates that appellant pursued additional appeal rights following the December 16, 2011 decision, although the accompanying appeal rights clearly stated that a claimant may request only one type of appeal at that time. Once the Board took jurisdiction over the schedule award issue on March 21, 2012, OWCP does not have concurrent jurisdiction and any OWCP decision issued on the schedule award issue while the Board had jurisdiction is null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990). OWCP decisions dated March 28 and May 3, 2012 are null and void.

⁸ See *James E. Jenkins*, 39 ECAB 860 (1988); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

⁹ See *Mary L. Henninger*, 52 ECAB 408 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 16, 2011 is affirmed.

Issued: October 19, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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