

appellant underwent a right shoulder acromioplasty to repair a full-thickness tear of the rotator cuff.

On October 13, 2011 appellant filed a claim for a schedule award. By letter dated October 24, 2011, OWCP requested that he submit an impairment evaluation from his physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

By decision dated December 6, 2011, OWCP denied appellant's claim for a schedule award. It found that he had not submitted any impairment rating.

On December 13, 2011 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In an impairment evaluation dated January 23, 2012, Dr. Gerald E. Dworkin, an osteopath, advised that appellant had a 19 percent permanent impairment of the right shoulder under the fifth edition of the A.M.A., *Guides*.

In a second impairment evaluation dated January 23, 2012, Dr. Dworkin evaluated appellant's impairment using the sixth edition of the A.M.A., *Guides*. He diagnosed right shoulder pain status post rotator cuff repair with "evidence of circumferential labral atrophy and degenerative changes with the AC [acromioclavicular] joint." Dr. Dworkin provided range of motion measurements of the right shoulder and found 4/5 muscle strength. Citing Chapter 15 of the sixth edition of the A.M.A., *Guides*, he determined that appellant had a 25 percent right upper extremity impairment using the diagnosis-based method for rating impairments.

A telephone hearing was held on February 28, 2012.

In a March 27, 2012 OWCP decision, the hearing representative set aside the December 6, 2011 decision and remanding the case for OWCP's medical adviser to review the reports from Dr. Dworkin to determine if permanent impairment was established.

On April 12, 2012 OWCP referred Dr. Dworkin's impairment rating under the fifth edition of the A.M.A., *Guides* to OWCP's medical adviser for review.

On April 19, 2012 OWCP's medical adviser reviewed Dr. Dworkin's January 23, 2012 report prepared using the fifth edition of the A.M.A., *Guides*. He identified the applicable diagnosis as a full-thickness rotator cuff tear and, after applying grade modifiers, determined that appellant had a seven percent permanent impairment of the right upper extremity.

By decision dated May 2, 2012, OWCP granted appellant a schedule award for a seven percent permanent impairment of the right upper extremity. The period of the award ran for 21.84 weeks from January 23 to June 23, 2012.

² In a progress report dated November 9, 2011, Dr. Raymond E. Dahl, an osteopath, discussed appellant's history of a rotator cuff repair and diagnosed a recurrent full-thickness rotator cuff tear of the right shoulder. He found that appellant was at maximum medical improvement and released him to resume his usual employment.

On May 8, 2012 appellant, through counsel, requested a telephone hearing.

Following a review of the written record, in a decision dated October 17, 2012, OWCP's hearing representative affirmed the May 2, 2012 decision.³ He found that OWCP's medical adviser was the only physician, who rated impairment under the sixth edition of the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing federal regulations⁵ 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.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*⁸ as the appropriate edition for all awards issued after that date.⁹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹⁰

ANALYSIS

The Board finds that the case is not in posture for decision. OWCP accepted that appellant sustained a right rotator cuff tear and authorized an acromioplasty to repair a full-thickness tear. In a decision dated December 6, 2011, it denied his schedule award claim as he had not submitted an impairment evaluation. On December 13, 2011 appellant requested a telephone hearing and submitted a January 23, 2012 impairment evaluation from Dr. Dworkin

³ On August 20, 2012 counsel agreed to a review of the written record in lieu of an oral hearing.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁷ 20 C.F.R. § 10.404.

⁸ A.M.A., *Guides* (6th ed. 2009).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

¹⁰ *See id.* at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

finding that, pursuant to the fifth edition of the A.M.A., *Guides*, he had a 19 percent right shoulder impairment. OWCP's hearing representative subsequently noted that, prior to the hearing, appellant submitted an impairment evaluation dated January 23, 2012 from Dr. Dworkin using the sixth edition of the A.M.A., *Guides*.¹¹ She remanded the case to refer Dr. Dworkin's new report to OWCP's medical adviser to review. OWCP, however, mistakenly referred only Dr. Dworkin's January 23, 2012 report utilizing the fifth edition of the A.M.A., *Guides* to the medical adviser. OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and extent of any impairment in accordance with the A.M.A., *Guides*.¹² OWCP did not forward the January 23, 2012 medical report from Dr. Dworkin using the sixth edition of the A.M.A., *Guides* as instructed by the hearing representative. While the claimant has the burden of establishing the extent of impairment due to an accepted injury, OWCP shares responsibility in the development of the evidence.¹³ The case will be remanded to forward Dr. Dworkin's January 23, 2012 report applying the sixth edition of the A.M.A., *Guides* to a medical adviser for review. Following such further development as OWCP deems necessary, it shall issue an appropriate decision.

CONCLUSION

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

¹¹ OWCP's hearing representative indicated that she received Dr. Dworkin's January 23, 2012 report using the sixth edition of the A.M.A., *Guides* prior to her March 27, 2012 decision. The record, however, indicates that OWCP received the report on May 2, 2012. Regardless, the report was received prior to the schedule award decision on review before the Board.

¹² See *supra* note 10.

¹³ See *D.M.*, 59 ECAB 576 (2008).

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 16, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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