

FACTUAL HISTORY

OWCP accepted that appellant, then a 43-year-old supervisory border patrol agent, sustained a cervical sprain, bilateral hand sprain and forehead abrasion as a result of being assaulted while arresting an alien smuggler in the performance of duty on February 9, 2006.

Appellant filed a claim for a schedule award on February 3, 2011.

In a November 16, 2010 report, Dr. John B. Dorsey, a Board-certified orthopedic surgeon, opined that appellant had a six percent permanent impairment of the right hand under Table 15-2,² page 391, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He diagnosed right hand sprain/contusion and status post release of chronic stenosing tenosynovitis of the right long finger. Dr. Dorsey assigned appellant to class 1, grade E, Table 15-2, page 392, and determined that his date of maximum medical improvement was January 1, 2010.

An electromyogram and nerve conduction studies (EMG/NCS) dated February 17, 2012 revealed chronic right C5 radiculopathy.

In a February 17, 2012 report, Dr. Demitri Adarmes, a Board-certified internist and appellant's attending physician, opined that appellant had an eight percent permanent impairment of the right upper extremity for the middle finger under Table 15-12,³ page 422, of the sixth edition of the A.M.A., *Guides*. He also opined that appellant had a six percent permanent impairment of the left upper extremity for C5 spinal nerve impairment under the sixth edition of the A.M.A., *Guides*. Dr. Adarmes determined that appellant's date of maximum medical improvement was February 17, 2012, the date of the examination.

On August 30, 2012 an OWCP medical adviser, Dr. Arthur S. Harris, reviewed the record and concurred with Dr. Adarmes' rating of 8 percent permanent impairment of the right upper extremity. He also determined that maximum medical improvement was achieved on February 17, 2012. Dr. Harris stated that Dr. Adarmes provided a rating of six percent permanent impairment of the left upper extremity for "residual problems with C5 nerve root impingement; however, this has not been accepted as being a causally-related condition."

By decision dated February 1, 2013, OWCP granted appellant a schedule award for an eight percent permanent impairment of the right arm, relying on Dr. Harris' August 30, 2012 report as the basis for its determination. The award ran for 24.96 weeks for the period February 17 to August 9, 2012.

² Table 15-2, page 391-94, of the sixth edition of the A.M.A., *Guides*, is entitled *Digit Regional Grid -- Digit Impairments*.

³ Table 15-12, page 421-23, of the sixth edition of the A.M.A., *Guides*, is entitled *Impairment Values Calculated From Digit Impairment*.

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁵ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.⁶

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁷ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁸ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.⁹

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

ANALYSIS

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

⁴ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁵ See *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁸ A.M.A., *Guides* (6th ed. 2009), pp. 494-531.

⁹ See *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁰ See *R.L.*, Docket No. 11-1661 (issued April 25, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *supra* note 6, Chapter 2.808.6(d) (August 2002).

On appeal, appellant contends that OWCP erroneously failed to address additional permanent impairment related to his accepted cervical sprain condition. OWCP accepted that appellant sustained a cervical sprain, bilateral hand sprain and forehead abrasion on February 9, 2006. In a February 1, 2013 award of compensation, it granted him a schedule award for an 8 percent permanent impairment of the right arm, relying on an OWCP medical adviser's August 30, 2012 report. Appellant claimed entitlement to increased schedule award compensation.

On February 17, 2012 Dr. Adarmes, appellant's attending physician, opined that appellant had a six percent permanent impairment of the left upper extremity for C5 spinal nerve impairment under the sixth edition of the A.M.A., *Guides*. On August 30, 2012 Dr. Harris, an OWCP medical adviser, reviewed the record and stated that Dr. Adarmes provided a rating of six percent permanent impairment of the left upper extremity for "residual problems with C5 nerve root impingement, however this has not been accepted as being a causally-related condition." The Board finds, however, that OWCP accepted appellant's claim for cervical sprain and the OWCP medical adviser did not clearly explain his conclusion regarding appellant's left upper extremity impairment. He did not discuss whether and how Dr. Adarmes misapplied the A.M.A., *Guides* or why his report was deficient regarding the impairment rating for appellant's left upper extremity. Thus, the medical adviser's report is of little probative value.¹¹ Consequently, the medical evidence is insufficiently developed to properly determine the degree of appellant's left upper extremity impairment.¹²

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 OWCP's medical adviser is insufficient to resolve the issue of whether appellant was entitled to an additional schedule award, thus, OWCP did not properly discharge its responsibilities in developing the record.¹⁵ Therefore, the Board finds that the case must be remanded for further development of the evidence and a reasoned medical opinion regarding whether appellant has additional permanent impairment of the left upper extremity due to his accepted employment injuries.¹⁶ Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹¹ See *Carl J. Cleary*, 57 ECAB 563, 568 n.14 (2006) (an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's impairment).

¹² See *R.L.*, *supra* note 10.

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

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

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

¹⁶ See *A.R.*, Docket No. 12-207 (issued June 21, 2012).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: January 9, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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