

**United States Department of Labor
Employees' Compensation Appeals Board**

C.G., Appellant

and

**DEPARTMENT OF THE ARMY, MATERIEL
COMMAND, Anniston, AL, Employer**

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**Docket No. 13-1519
Issued: September 25, 2014**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

On June 12, 2013 appellant, through his attorney, filed a timely appeal from the April 3, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 13-1519.

In its April 3, 2013 decision, OWCP granted appellant a schedule award for a 7 percent permanent impairment of his left arm, 5 percent permanent impairment of his right arm and 12 percent permanent impairment of his right leg.¹ The award ran for 72 weeks from May 8, 2012 to September 23, 2013. OWCP indicated that the award was based on its medical adviser's approval of a May 2012 impairment rating conducted by a physical therapist for the physical therapy firm of Wilhoite and Associates.

¹ OWCP accepted that on March 9, 2011 appellant, then a 45-year-old welder leader, sustained a closed fracture of the astragalus of his right foot, traumatic arthropathy of his right foot and ankle, closed commuted talar navicular fracture/dislocation of his right foot/ankle, complete rupture of the rotator cuffs of both shoulders, loose body in his right shoulder region and sprains of his right shoulder and upper arm. It authorized several surgeries, including open reduction internal fixation of his right midfoot on March 9, 2011, right rotator cuff repair and open removal of old sutures/anchors on June 13, 2011, left rotator cuff repair on October 5, 2011 and right triple arthrodesis on December 21, 2011.

The record contains a document which was prepared by Rashad Pearson, a physical therapist for Wilhoite and Associates and which was signed by him on May 23, 2012. The document bears the heading, “Combined Impairment for Whole Body (5, 7, 12) = 22 percent” and contains a brief summary of appellant’s factual and medical history. Mr. Pearson indicated that an impairment rating evaluation was carried out using several tables of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² On May 24, 2012 the document was signed without comment by Dr. Eli J. Hurowitz and Dr. David P. Adkison, two of appellant’s attending Board-certified orthopedic surgeons. The record contains February 11, March 1 and 22, 2013 reports in which an OWCP medical adviser indicated that appellant had a 7 percent permanent impairment of his left arm, 5 percent permanent impairment of his right arm and 12 percent permanent impairment of his right leg. The medical adviser stated that the May 2012 impairment rating calculation carried out by Mr. Pearson of Wilhoite and Associates was correct.

The Board finds that OWCP has not adequately explained how its April 3, 2013 schedule award decision was supported by the medical evidence in the present record. The record does not contain probative medical evidence providing a rationalized medical opinion regarding appellant’s permanent impairment.³ The above-noted document signed by Dr. Hurowitz and Dr. Adkison on May 24, 2012 does not constitute such an opinion because it does not provide a clear opinion on how appellant’s impairment rating was derived under the relevant standards of the sixth edition of the A.M.A, *Guides*. Although the document referenced various tables of the sixth edition of the A.M.A, *Guides*, it did not provide any explanation of how these tables were applied.⁴ OWCP’s medical adviser concluded that appellant had a 7 percent permanent impairment of his left arm, 5 percent permanent impairment of his right arm and 12 percent permanent impairment of his right leg, but his impairment rating appears to have been based on nonmedical evidence, *i.e.*, an impairment rating calculation conducted by Mr. Pearson, a physical therapist.⁵

² 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses. 20 C.F.R. § 10.404 (1999). The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2008. FECA Bulletin No. 09-03 (issued March 15, 2009).

³ The Board has held that medical reports are entitled to little probative value when their medical opinions are not supported by rationale. *See S.S.*, 59 ECAB 315 (2008).

⁴ In addition, the document does not contain a clear opinion on the extent of appellant’s impairment as it merely states, “Combined Impairment for Whole Body (5, 7, 12) = 22 percent.”

⁵ The record also contains a functional capacity evaluation carried out by Mr. Pearson on May 8 and 9, 2012 and signed by him on May 23, 2012 as well as an impairment rating calculation signed by Mr. Pearson on May 23, 2012. The impairment rating document contained references to application of various tables of the sixth edition of the A.M.A., *Guides* and indicated that appellant had a 7 percent permanent impairment of his left arm, 5 percent permanent impairment of his right arm and 12 percent permanent impairment of his right leg. The Board notes, however, that these documents do not constitute probative medical evidence because they were not reviewed and approved of by a physician. Physical therapists are not physicians under the Federal Employees’ Compensation Act (FECA) and therefore their opinions do not constitute medical opinion evidence and have no weight or probative value on medical matters. *C.E.*, Docket No. 14-710 (issued August 11, 2014); *Jane A. White*, 34 ECAB 515, 518-19 (1983).

Moreover, the record does not currently contain any other medical evidence on which a schedule award may be based. A document produced by Charles McKie, a physical therapist with ACT Physical Therapy, which was signed by him on October 31, 2012 references tables of the sixth edition of the A.M.A., *Guides* and concludes that appellant has 19 percent permanent impairment of his left arm, 14 percent permanent impairment of his right arm and 20 percent permanent impairment of his right leg. Although the document was signed by Dr. Adkison and Dr. Hurowitz on October 31, 2012 and these physicians later produced March 20, 2013 letters approving of the impairment ratings contained within, none of the documents pertaining to this October 2012 impairment rating contains a rationalized explanation of how the impairment rating was derived under the relevant standards of the sixth edition of the A.M.A., *Guides*.

At a minimum a document which purports to be the opinion of a physician must clearly show that it was written and reviewed by a physician. The presence of a doctor's initials or signature, without evidence that the doctor prepared or reviewed the report is not sufficient to establish it as a medical opinion under FECA.

For these reasons, the Board finds that OWCP has not adequately explained the basis for its April 3, 2013 decision regarding the extent of appellant's permanent impairment. The case is remanded to OWCP for further development on this matter to be followed by the issuance of an appropriate decision regarding appellant's entitlement to schedule award compensation.

IT IS HEREBY ORDERED THAT the April 3, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.⁶

Issued: September 25, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁶ Richard J. Daschbach, Chief Judge, who participated in the preparation of this order, was no longer a member of the Board after May 16, 2014.