

rupture, right sprain of shoulder upper arm rotator cuff, and other affections of the shoulder region not elsewhere classified. Appellant stopped work and received wage-loss compensation benefits. He sought treatment with Dr. Ammar Anbari, a Board-certified orthopedic surgeon, and underwent biceps tenotomy surgery on October 11, 2011. Appellant was placed on the periodic rolls, effective November 6, 2011. On June 13, 2012 he returned to work part time with restrictions.

In a June 2, 2014 medical report, Dr. Anbari examined appellant's post-bilateral shoulder arthroscopy for submission of an impairment rating. He noted that appellant could return to full duty without restrictions except for no lifting over four feet above the ground. Dr. Anbari opined that appellant reached maximum medical improvement (MMI). In accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he opined that appellant had 11 percent permanent impairment of the right shoulder due to distal clavicle resection and 7 percent permanent impairment of the left shoulder.

On July 7, 2014 appellant filed a claim for a schedule award (Form CA-7).

By letter dated July 18, 2014, OWCP requested that appellant submit an impairment evaluation from his attending physician in accordance with the sixth edition of the A.M.A., *Guides* (6th ed. 2009).² It provided him 30 days to submit the requested impairment evaluation.

The only current medical evidence received was a November 7, 2014 report from David Farrington, a physician assistant (PA-C). Mr. Farrington provided findings on physical examination and recommended a new magnetic resonance imaging (MRI) scan of the right shoulder to evaluate whether the rotator cuff had return.

By decision dated September 29, 2015, OWCP denied appellant's claim for a schedule award. It noted that the medical evidence supported a finding that his condition had not yet reached a fixed and permanent state.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.³ 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

² On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*. The applicable edition of the A.M.A., *Guides* is determined as of the date that the schedule award decision reached. It is not determined by either the date of MMI or when the claim for such award was filed. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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

all claimants. The A.M.A., *Guides* (6th ed. 2009) (A.M.A., *Guides*) has been adopted by the implementing regulations as the appropriate standard for evaluating scheduled losses.⁴

It is the claimant's burden to establish that he has sustained a permanent impairment of the scheduled member or function as a result of any employment injury.⁵ Before an award may be made, it must be medically determined that no further improvement can be anticipated and the impairment must reach a fixed and permanent state, which is known as MMI.⁶ OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁷

The sixth edition requires identifying the impairment class for the Class of Diagnosis (CDX) condition, 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.

ANALYSIS

OWCP accepted appellant's claim for bilateral rotator cuff rupture, right recurrent dislocation of the shoulder region, right biceps tendon rupture, right sprain of the shoulder upper arm rotator cuff, and right other affections of shoulder region not elsewhere classified. On July 7, 2014 appellant filed a claim for a schedule award. By decision dated September 29, 2015, OWCP denied his schedule award claim finding that he had not submitted an impairment evaluation to establish that he sustained a permanent impairment resulting from his work injury.

The Board finds that appellant has not submitted sufficient evidence to establish that, as a result of his employment injury, he sustained permanent impairment to a scheduled member to establish a schedule award. By letter dated July 18, 2014, OWCP informed him of the type of evidence necessary to establish his schedule award claim and specifically requested that he submit an impairment evaluation from his attending physician in accordance with the sixth edition of the A.M.A., *Guides*.

In a June 2, 2014 medical report, Dr. Anbari examined appellant post-bilateral shoulder arthroscopy and opined that appellant reached MMI. In accordance with the fifth edition of the A.M.A., *Guides*, he opined 11 percent permanent impairment of the right shoulder due to distal clavicle resection and 7 percent permanent impairment of the left shoulder. The Board finds that Dr. Anbari's report is not sufficient to establish that appellant is entitled to a schedule award.

⁴ *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

⁵ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(1) (January 2010).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7 (February 2013).

⁸ A.M.A., *Guides* 494-531.

The Board notes that Dr. Anbari improperly utilized the fifth edition of the A.M.A., *Guides* when providing his impairment rating. In *Harry D. Butler*,⁹ the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.¹⁰ On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.¹¹ As Dr. Anbari failed to utilize the sixth edition of the A.M.A., *Guides*, his opinion is of no probative value.

The only other current evidence received was a November 7, 2014 report from Mr. Farrington who provided findings on physical examination and recommended a right shoulder MRI scan to determine whether the rotator cuff had return. The Board has held however that an opinion from a physician assistant has no probative medical value in establishing appellant's schedule award claim. A physician assistant is not considered to be a physician as defined under FECA.¹² The opinion expressed by Mr. Farrington regarding maximum medical improvement is therefore of no probative medical value.

It is appellant's burden of proof to establish that he sustained permanent impairment of a scheduled member as a result of an employment injury.¹³ The medical evidence must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁴ Appellant did not submit such evidence and thus, did not meet his burden of proof.¹⁵

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 not established that he is entitled to a schedule award for permanent impairment of the left upper extremity.

⁹ 43 ECAB 859 (1992).

¹⁰ *Id.* at 866.

¹¹ FECA Bulletin No. 09-03 (issued March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013).

¹² *J.B.*, Docket No. 13-0976, (issued September 5, 2013); *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

¹³ *Supra* note 5.

¹⁴ *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

¹⁵ *V.W.*, Docket No. 09-2026 (issued February 16, 2010); *L.F.*, Docket No. 10-343 (issued November 29, 2010).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 29, 2015 is affirmed.

Issued: February 11, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board