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

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| **P.O., Appellant** | ) | |
| **and** | ) | **Docket No. 15-1631** |
| | ) | **Issued: June 2, 2016** |
| **DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, San Francisco, CA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On July 27, 2015 appellant filed a timely appeal from a January 27, 2015 merit decision and a June 19, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUES***

The issues are: (1) whether appellant has established that he sustained more than one percent permanent impairment to his left upper extremity and more than one percent permanent impairment to his right upper extremity, for which he previously received a schedule award; and (2) whether OWCP properly refused to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On September 28, 2007 appellant, then a 55-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2007 he injured his left upper arm when he bumped against a door while moving boxes.[2] OWCP accepted the claim for left elbow strain and cervicothoracic strain and paid benefits. Appellant stopped work following the injury and returned to work on December 4, 2007.[3] He retired from the employing establishment on March 31, 2009.

In a November 22, 2010 report, Dr. Joel Weddington, an orthopedic surgeon, noted that appellant was referred by his treating physician for an impairment rating of the upper extremities, neck, and back. He diagnosed severe cervical spine degenerative changes with spondylosis and multilevel disc pathology and herniation; left elbow lateral epicondylitis with chronic pain; chronic thoracic pain and mild degenerative changes; left shoulder partial rotator cuff tear and loss of function and motion; and right shoulder impairment with loss of motion, magnetic resonance imaging (MRI) scan pending. Dr. Weddington concluded that appellant had reached maximum medical improvement as of the date of his examination. Citing to tables and figures within the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), sixth edition, he set forth his calculations and opined that the left shoulder permanent impairment was five percent, the right shoulder permanent impairment was four percent, and the permanent impairment of the left elbow was one percent. Dr. Weddington also indicated that appellant had 20 percent whole person impairment for the cervical spine and 2 percent whole person impairment for the thoracic spine.

On December 3, 2010 and May 23, 2012 appellant filed a Form CA-7 claim for a schedule award.

In a December 6, 2010 supplemental report, Dr. Weddington determined that appellant sustained 10 percent right arm permanent impairment due to his shoulder conditions noted that the November 22, 2010 MRI scan findings of the right shoulder revealed full thickness rotator cuff tear and acromioclavicular osteoarthritis. He noted that he had rated the cervical spine at 20 percent in his previous report and wished to add the impairment rating for intervertebral disc herniations at one or more levels with medically documented injury with documented signs of radiculopathy of a single, chronic, and appropriate level.

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[2] Appellant filed several prior claims, includes file numbers xxxxxx875, xxxxxx824, xxxxxx405, and xxxxxx564. Under file number xxxxxx875, OWCP accepted a lumbosacral strain for a May 14, 2002 work injury. It subsequently accepted a cervical strain, thoracic strain, bilateral knee sprain, bilateral shoulder sprain, and left hip strain. Appellant returned to his full-duty work position on September 16, 2002. Under file number xxxxxx824, OWCP accepted that he sustained a temporary aggravation of a cervical strain on June 29, 1992. This claim was subsequently denied for continued benefits on September 10, 2002. Under file number xxxxxx405, OWCP accepted that he sustained an aggravation of cervical spondylosis and right shoulder tendinitis on May 24, 1999. This claim was subsequently closed for medical treatment due to inactivity. Under file number xxxxxx564, OWCP accepted that appellant sustained a work-related cervical and right shoulder strains on June 28, 2000. This claim was closed on March 6, 2003.

[3] Appellant was on compensation time from October 1 through November 9, 2007 and then was on leave without pay from November 12 through December 3, 2007.

In an April 13, 2011 report, Dr. Ellen Pichey, an OWCP medical adviser, reviewed Dr. Weddington's report and opined that the total impairment for the left upper extremity equaled one percent. Utilizing the sixth edition of the A.M.A., *Guides*, she noted:

> "Impairment due to left elbow strain, history of painful injury, residual symptoms without consistent objective findings. [A]s per Table 15-4 page 98, class 1, default position C, one present. Impairment for the clinical studies is not applicable. Impairment for the physical examination is grade modifier 0, as per Table 15-8 page 408. Impairment for the functional history is grade modifier 1 as per Table 15-7 page 406. Using the net adjustment formula, page 411, the default position is modified by -1, moving to default position B and an impairment of one percent.

The medical adviser noted that Dr. Weddington gave impairment for the shoulder, which was not an accepted condition, and that impairment for the cervical spine could only be assessed as impairment to an extremity, and there appeared to be no neuropathy or other ratable impairment.

On May 5, 2011 OWCP determined that a second opinion examination was necessary to determine the current status of appellant's accepted conditions.

In a June 1, 2011 report, Dr. Ramon L. Jimenez, a Board-certified orthopedic surgeon and OWCP referral physician, opined that appellant continued to have residuals of the neck sprain with the resultant diagnosis of cervical stenosis secondary to multiple disc protrusions, which never resolved. He indicated that the left elbow strain had resolved and appellant's symptoms were more from his neck and left shoulder. Dr. Jimenez indicated that the MRI scan evidence of the cervical spine pathology reasonably substantiated causation, as it was objective medical evidence of the cause of his symptoms. The residuals of the cervical sprain could be documented by the subjective complaints of pain, particularly of a radicular nature, and the objective findings of limitation of motion, tenderness, and carpal tunnel like symptoms to the left and right hands and wrists. Dr. Jimenez indicated that there was no evidence of any nonindustrial or preexisting disability.

On August 11, 2011 OWCP requested that Dr. Jimenez clarify his opinion that residuals of the September 27, 2007 neck strain continued. In an August 30, 2011 supplemental report, Dr. Jimenez advised that appellant had a diagnosis of cervical sprain. Appellant had developed signs and symptoms of numbness and tingling, while cervical sprain, as well as some underlying cervical spondylosis, had been present initially, with the persistent symptoms and mechanical derangement in his neck, it was likely that the underlying condition exacerbated and worsened, developing into a cervical disc protrusion. Dr. Jimenez further clarified that the cervical disc protrusions were related to the cervical sprain. He explained that the cervical sprain was the initial injury, which aggravated the underlying condition on a permanent basis. Thus, the disc protrusions were consequential to the cervical sprain and represented an aggravation.

By letter dated December 5, 2011, OWCP advised appellant that his claim for schedule award compensation benefits could not be processed because the medical evidence of record indicated that his conditions had not reached maximum medical improvement.

In a January 23, 2012 report, Dr. Fred Blackwell, a Board-certified orthopedic surgeon, indicated that appellant was considered to be at maximum medical improvement. He explained that, although appellant was a candidate for surgery based on MRI scan studies for both shoulders and clinical findings, surgical intervention had been declined. Dr. Blackwell indicated that there was no other form of treatment that could provide any substantial change in the mechanical anatomical abnormalities that have been identified and, therefore, appellant is by definition at maximum medical improvement.

On March 30, 2012 OWCP determined that another second opinion examination was necessary to determine the status of appellant's accepted conditions. It updated the statement of accepted facts (SOAF) to note degenerative diseases of the spine or shoulder were not accepted as work related under this claim.

In a May 21, 2012 report, Dr. Mohinder Nijjar, a Board-certified orthopedic surgeon and OWCP referral physician, indicated that appellant had multiple previous injuries to his neck, and an aggravation of the previous injuries in 2008 when he was undergoing training. He noted that appellant continued to have neck problems, but that appellant had prior injuries to his neck and those prior injuries led to the accepted injury of 2007, and later the aggravation of 2008. Dr. Nijjar found that the left elbow examination had no objective findings of sprain of the elbow and it appeared that the elbow sprain had resolved. He indicated that the condition most likely resolved one year after the injury. With regard to the cervical sprain, Dr. Nijjar noted that appellant had significant pathology as confirmed by the MRI scan and his history of multiple injuries affecting his cervical spine. He indicated that the cervical sprain should have resolved within a year or so, but since appellant had significant pathology due to other injuries, at this time, it is medically impossible to separate other injuries from the cervical sprain. Therefore, Dr. Nijjar concluded that there was a good likelihood that appellant did not have residuals of the accepted cervical sprain and his current condition was caused by other injuries.

In its July 11, 2012 notice of proposed termination, OWCP disqualified Dr. Jimenez' second opinion reports as they were not based upon the SOAF, objective medical evidence, or rationale.

In a July 24, 2012 report, Dr. Pichey, the OWCP medical adviser, again reviewed the record and opined that there was no change in her previous calculation of one percent impairment to the left upper extremity. She noted that the accepted conditions were left elbow sprain and neck sprain and that appellant was previously found to have one percent impairment of the left upper extremity. The medical adviser additionally noted that degenerative conditions affecting the left shoulder or cervical spine were not accepted as work related in this case. As Dr. Nijjar noted, the elbow sprain had resolved, and the medical adviser indicated that under Table 15-4, page 398, appellant had class 0 or zero percent impairment. Dr. Nijjar also indicated that the acute cervical strain related to the initial injury resolved, although appellant remained symptomatic, but which was related to a chronic degenerative condition. Thus, the medical adviser indicated that appellant had zero percent permanent impairment of the left upper extremity.

In a July 21, 2012 report, Dr. Blackwell commented upon Dr. Nijjar's opinion that there was a "good likelihood" that appellant did not suffer from residuals of his September 27, 2007

cervical sprain and that his current cervical condition was related to appellant's other cervical injuries and were merely subjective. He noted that Dr. Nijjar provided no medical rationale to suggest that the neck sprain was resolved. Dr. Blackwell explained that it was common knowledge in orthopedics that underlying pathology could exist in an asymptomatic fashion only to be revealed by a specific injury and become a chronic problem. He also opined that, since chronic sprain findings and the underlying pathology could not be distinguished, it was illogical on Dr. Nijjar's part to find that the sprain was no longer a factor. Dr. Blackwell indicated that he agreed with Dr. Nijjar that appellant no longer had any significant pathology or orthopedic issues relating to the elbow sprain.

By decision dated September 17, 2012, OWCP terminated appellant's entitlement for medical and wage-loss benefits effective September 17, 2012. Also, by decision dated September 17, 2012, it denied his claim for a schedule award based on the determination that he had not sustained a measureable impairment due to his accepted September 27, 2007 injury, which had resolved.

Appellant disagreed with the September 17, 2012 decisions and requested an oral hearing, which was held on February 19, 2013. By decision dated April 24, 2013, an OWCP hearing representative affirmed in part OWCP's September 17, 2012 termination decision, finding that his work-related left elbow strain had resolved. However, it reversed the termination decision, with regard to his accepted cervical strain as there remained an unresolved conflict in medical opinion. The hearing representative noted that appellant had prior claims for accepted cervical conditions under file numbers xxxxxx875, xxxxxx824, xxxxxx405, and xxxxxx564, which were not referenced in the SOAF and both second opinion physicians in the instant claim had referenced appellant's prior cervical claim injuries, but did not review medical evidence which pertained to those cases. The hearing representative found that those cases should be doubled with the current claim and a new SOAF should be issued to reflect relevant medical history. The hearing representative found that Dr. Blackwell had concurred with OWCP's referral physician Dr. Jimenez' June 1 and August 30, 2011 opinions that appellant's work-related cervical injury had not resolved. In his July 21, 2012 report, he did not agree with Dr. Nijjar's May 21, 2012 second opinion, which concluded that there was a "good likelihood" that appellant did not suffer from residuals of his September 27, 2007 cervical sprain and that his current cervical condition was related to his other cervical injuries. Thus, the hearing representative found that OWCP had not met its burden of proof to establish that appellant's work-related cervical condition had resolved. There remanded an unresolved conflict in medical opinion between Dr. Blackwell and Dr. Nijjar. The hearing representative set aside OWCP's September 17, 2012 decision denying appellant's entitlement to schedule award compensation benefits and remanded for resolution of the conflict in medical opinion regarding the degree of his permanent impairment and date of maximum medical improvement.

OWCP referred appellant, an updated SOAF and list of questions to Dr. Martin Trieb, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict of medical opinion with regard to the percentage of permanent partial impairment to any extremity affected by the accepted medical conditions of left elbow sprain and neck sprain.

In a September 2, 2014 report, Dr. Trieb reviewed the case record and noted the history of injury and provided examination findings.[4] Examination demonstrated weakness of the bilateral intrinsic muscles of the hands as well as abnormal sensation in the median, radial, and ulnar nerve distribution. Examination of the cervical spine demonstrated limited range of motion. Dr. Trieb opined that appellant's left elbow sprain had resolved. He also opined that appellant's cervical condition was related to his employment injuries and provided medical rationale. Based on his review of the record, Dr. Trieb opined that appellant's cervical symptoms had plateaued and reached maximum medical improvement on or about November 22, 2010. While OWCP requested that he provide an impairment calculation using the sixth edition of the A.M.A., *Guides*,[5] he advised he would continue to use the fifth edition of the A.M.A., *Guides* until the California Orthopedic Association directed him to use the sixth edition. Based on the fifth edition of the A.M.A., *Guides*, calculated 24 percent whole person impairment of the cervical spine.

On December 15, 2014 OWCP directed that a different medical adviser review Dr. Trieb's September 2, 2014 report and to convert Dr. Trieb's impairment calculation to the sixth edition of the A.M.A., *Guides* for the accepted conditions of left elbow sprain and neck sprain. In a January 2, 2015 report, an OWCP medical adviser, Dr. Arthur S. Harris reviewed appellant's file and noted that OWCP accepted conditions of neck sprain and left elbow sprain. He advised, based on a review of the medical record, that appellant had degenerative joint/degenerative disc disease of the cervical spine, cervical disc bulging C4-5 C6-7, and cervical radiculopathy. Utilizing *The Guides Newsletter* July/August 2009 to rate spinal nerve impairments, the medical adviser opined that appellant has one percent permanent impairment of the right upper extremity for residual problems with mild pain/impaired sensation from right sided C6 cervical radiculopathy and 1 percent permanent impairment of the left upper extremity for residual problems with mild pain/impaired sensation from left C6 cervical radiculopathy. He reported that maximum medical improvement was reached on November 22, 2010 for both the right upper extremity and the left upper extremity as indicated by Dr. Trieb in his September 2, 2014 report. The medical adviser noted that Dr. Trieb had calculated impairment based on the fifth edition of the A.M.A., *Guides* and on the cervical spine grid, which is not the proper approach utilized by OWCP to rate spinal nerve impairments.

By decision dated January 27, 2015, OWCP issued a schedule award for one percent impairment to the right upper extremity and one percent impairment to the left upper extremity. The award ran 6.24 weeks for the period November 22, 2010 to January 4, 2011.

On March 27, 2015 OWCP received appellant's request for reconsideration of its January 27, 2015 decision. Appellant sent in several letters concerning the status/failure of OWCP to expand and/or adjudicate his upper extremities, bilateral shoulders, and back conditions.

[4] Dr. Trieb also provided examination findings of the shoulder which he noted was not part of the accepted facts, but was important as there was radiating pain from the neck in the shoulders.

[5] A.M.A., *Guides* (6th ed. 2009).

In a February 13, 2015 medical report, Dr. Blackwell, a Board-certified orthopedic surgeon, noted that he had reviewed the medical adviser's January 2, 2015 report and that the medical adviser did not provide an explanation of how he determined the impairment rating of "1 percent WPI." He contended that his report of November 17, 2013 should be used for calculation of the award.[6]

By decision dated June 19, 2015, OWCP declined to review the merits of the claim. It found the reconsideration request was insufficient to warrant further review of the merits of the claim.

## ***LEGAL PRECEDENT -- ISSUE 1***

The schedule award provision of FECA,[7] and its implementing federal regulations,[8] 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[9] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to rate permanent impairment.[10]

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments.[11] OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.[12] The impairment is premised on evidence of radiculopathy affecting the upper and/or lower extremities.[13]

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[6] In his November 17, 2013 report, Dr. Blackwell noted that appellant had been permanent and stationary since November 22, 2010. He noted that page 2 of *The Guides Newsletter* July/August 2009 rating spinal nerve extremity impairment stated that cervical spine intervertebral disc herniations were rated per Table 17-2, cervical spine regional grid. Dr. Blackwell calculated 12 percent upper extremity impairment for sensory peripheral nerve injury and motor deficits.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id.* at § 10.404(a).

[10] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *see also* Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013).

[11] *See* Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); and Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010); *see also R.M.*, Docket No. 12-1811 (issued March 14, 2013).

[12] *Id.* at Chapter 3.700, Exhibit 4 (January 2010); *see R.M.*, Docket No. 12-1811 (issued March 14, 2013).

[13] *Id.*

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[14] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination, and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[15] When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[16]

When OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.[17] When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative, or lacks rationale, OWCP must submit the case record and a detailed SOAF to a second impartial specialist for a rationalized medical opinion on the issue in question.[18] Unless this procedure is carried out by OWCP, the intent of section 8123(a) will be circumvented and the impartial medical examiner's report is insufficient to resolve the conflict in medical evidence.[19]

OWCP procedures further provide that, while an OWCP medical adviser may review the opinion of a referee specialist in a schedule award case, the resolution of the conflict is the specialist's responsibility and not that of OWCP's medical adviser who should not resolve the conflict of medical opinion or attempt to clarify or expand the opinion of the medical referee. If clarification is necessary, a supplemental report should be obtained from the referee specialist.[20]

[14] 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

[15] 20 C.F.R. § 10.321.

[16] *V.G.*, 59 ECAB 635 (2008).

[17] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11(d)(2) (September 2010).

[18] *See D.T.*, Docket No. 14-332 (issued May 14, 2014); *Talmadge Miller*, 47 ECAB 673 (1996); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11(e) (September 2010).

[19] *See D.T., id.*

[20] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(g)(1,2) (February 2013).

## ***ANALYSIS -- ISSUE 1***

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

In his July 21, 2012 report, Dr. Blackwell disagreed with Dr. Nijjar's May 21, 2012 second opinion which concluded that there was a "good likelihood" that appellant did not suffer from residuals of his September 27, 2007 cervical sprain and that his current cervical condition was related to his other cervical injuries. He explained that it was common knowledge in orthopedics that underlying pathology could exist in an asymptomatic fashion only to be revealed by a specific injury and become a chronic problem. Dr. Blackwell also opined that since the chronic sprain findings and the underlying pathology could not be distinguished, it was illogical on Dr. Nijjar's part to find that the sprain was no longer a factor. As a conflict in medical opinion existed as to whether appellant's work-related neck sprain had resolved, and whether appellant had a permanent impairment causally related to the accepted injury, OWCP properly referred appellant to Dr. Trieb for an impartial medical examination to resolve the conflict of medical opinion with regard to the percentage of permanent partial impairment to any extremity affected by the accepted medical conditions of left elbow sprain and neck sprain.

Dr. Trieb's September 2, 2014 report is of diminished probative value. Dr. Trieb opined that appellant's left elbow sprain had resolved and provided medical rationale as to why appellant's cervical condition was related to his employment injuries. He indicated that the date of maximum medical improvement was November 22, 2010. Dr. Trieb utilized the fifth edition of the A.M.A., *Guides,* to find 24 percent whole person impairment for loss of motion of the cervical spine as well as neurologic deficit of the upper extremities. OWCP, however, uses the sixth edition of the A.M.A., *Guides* to calculate schedule awards.[21] A medical opinion based on an inappropriate edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of permanent impairment.[22] Furthermore, a rating based upon whole person impairment is improper under the A.M.A., *Guides*.[23] Consequently, Dr. Trieb's opinion is insufficient to resolve the conflict in medical opinion.

OWCP medical adviser Dr. Harris reviewed Dr. Trieb's September 2, 2014 report. He noted that the date of maximum medical improvement was November 22, 2010. The medical adviser also noted that Dr. Trieb had documented appellant's ongoing problems with the cervical spine, but did not calculate impairment based on the sixth edition of the A.M.A., *Guides*. Although he properly referenced *The Guides Newsletter* July/August 2009, he did not discuss specific tables or procedures, nor provide any explanation for his conclusion that appellant had one percent impairment of the right upper extremity and one percent impairment of the left upper extremity.[24]

[21] *See supra* note 7.

[22] *See F.T.*, Docket No. 14-553 (issued August 11, 2014); *Fritz A. Klein*, 53 ECAB 642 (2002).

[23] *See Tania R. Keka*, 55 ECAB 354 (2004); *James E. Millis*, 43 ECAB 215 (1991) (neither FECA nor implementing regulations provide for a schedule award for impairments to the body as a whole).

[24] *See C.K.*, Docket No. 14-1861 (issued January 2, 2015).

When OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.[25] On remand, it should ask Dr. Trieb to provide an impairment opinion based on the sixth edition of the A.M.A., *Guides,* as to whether appellant has sustained permanent impairment causally related to the accepted employment injuries. Following such further development as deemed necessary, OWCP should issue a *de novo* decision on appellant's entitlement to a schedule award.

## ***CONCLUSION***

The Board finds that this case is not in posture for decision on the extent of permanent impairment to appellant's upper extremities.[26]

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 19 and January 27, 2015 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further proceedings consistent with this decision.

Issued: June 2, 2016
Washington, DC

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

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

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

[25] *See K.C.*, Docket No. 14-791 (issued August 8, 2014); *Guiseppe Aversa,* 55 ECAB 164 (2003).

[26] In light of the disposition of this case, issue 2 is hereby rendered moot.