

improvement (MMI) of January 23, 2007, for which he received a schedule award for 13 percent permanent impairment of the left upper extremity.

Appellant was treated by Dr. Andrew F. Brooker, an attending Board-certified orthopedic surgeon, who diagnosed a “large, widespread, destructive tear” of the left rotator cuff on May 9, 2012. On August 20, 2012 Dr. Brooker performed an authorized open acromioplasty and left rotator cuff repair. He noted that appellant had undergone a prior left rotator cuff repair due to the injury accepted under File No. xxxxxx629.

On January 28, 2013 appellant filed a claim for a schedule award (Form CA-7). As Dr. Brooker opined that appellant required additional surgery, OWCP did not develop the schedule award claim at that time.

On February 18, 2013 Dr. Brooker performed an open complex debridement and partial acromionectomy, with repair of a large, complex, chronic left rotator cuff tear. OWCP authorized the procedure and paid wage-loss compensation during appellant’s recovery. As appellant continued to have severely restricted left shoulder motion, Dr. Brooker performed a closed manipulation of the left shoulder under general anesthesia on June 24, 2013. He opined on July 13, 2013 that appellant had attained MMI and could return to full-duty work.

On August 26, 2013 OWCP obtained a second opinion from Dr. Melburn K. Huebner, a Board-certified orthopedic surgeon. Dr. Huebner concurred that appellant had attained MMI. Referring to Table 15-5 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*) (2009),² he found a class 1 diagnosis-based impairment (DBI) for a full-thickness rotator cuff tear. He assessed a grade 2 modifier for functional history due to difficulties with self-care, a grade 3 modifier for findings on physical examination due to severely diminished range of motion (ROM) with palpable muscle atrophy, and a grade 2 modifier for findings on clinical studies due to continued abnormalities on postsurgical imaging studies. Applying the net adjustment formula, Dr. Huebner calculated a net modifier of +2, shifting the default five percent upper extremity impairment two steps to the right, equaling seven percent impairment of the left arm. He then explained that the ROM assessment method described appellant’s impairment more accurately than the DBI method. Referring to Table 15-34,³ Dr. Huebner found nine percent permanent impairment of the left upper extremity for flexion at 49 degrees, one percent impairment for extension at 34 degrees, six percent impairment for abduction at 30 degrees, one percent impairment for adduction at 11 degrees, four percent impairment for internal rotation at 9 degrees, and two percent impairment for external rotation at 9 degrees. He added these impairments to equal 23 percent permanent impairment of the left upper extremity.

On October 1, 2013 appellant claimed an additional schedule award (Form CA-7).

An OWCP medical adviser reviewed Dr. Huebner’s impairment rating on October 21, 2013, and concurred with his findings and conclusions. He noted that as appellant previously

² A.M.A., *Guides* 401-05, Table 15-5, of the sixth edition is titled “Shoulder Regional Grid.”

³ *Id.* at 475, Table 15-34, of the sixth edition is titled “Shoulder Range of Motion”

received a schedule award for 13 percent permanent impairment of the left arm under File No. xxxxxx629, OWCP should subtract that percentage from the 23 percent determined by Dr. Huebner, resulting in an additional 10 percent permanent impairment of the left arm.

By decision dated January 16, 2014, OWCP issued appellant a schedule award for an additional 10 percent permanent impairment of the left upper extremity, for a total of 23 percent. The award, equal to 31.20 weeks of compensation, ran from August 26, 2013 to January 11, 2014.

Dr. Brooker obtained an updated magnetic resonance imaging (MRI) scan of the left shoulder on June 6, 2014, which demonstrated a recurrent full-thickness supraspinatus tear with significant retraction. Based on these findings, on July 17, 2014, OWCP expanded appellant's claim to include developmental dislocation of the left shoulder.

On September 5, 2014 Dr. Brooker performed a reverse total arthroplasty of the left shoulder, authorized by OWCP. The procedure involved an open deltopectoral incision, osteotomy of the humeral head, and implantation of a prosthetic glenosphere. Dr. Brooker prescribed postoperative physical therapy on September 17, 2014. Appellant received wage-loss compensation for total disability on the daily and periodic rolls beginning October 17, 2014.

As appellant's symptoms and ROM did not improve, on January 9, 2015, Dr. Brooker attempted a closed manipulation of the left shoulder under general anesthesia. He observed 15 to 20 degrees of abduction and no appreciable internal or external rotation. Dr. Brooker noted that manipulation in all planes failed to significantly improve appellant's range of left shoulder motion. He diagnosed arthrofibrosis of the left shoulder status post reverse left shoulder replacement.

On March 12, 2015 appellant claimed an additional schedule award (Form CA-7). In a March 26, 2015 letter, OWCP advised appellant of the type of evidence needed to establish his claim, including a report from his attending physician finding that he attained MMI, and a comprehensive evaluation of any permanent impairment utilizing the appropriate portions of the A.M.A., *Guides*. OWCP afforded appellant 30 days to submit such evidence.

On April 8, 2015 OWCP received an impairment rating from Dr. Gerald Hill, a physician specializing in occupational medicine. Dr. Hill reviewed the medical record and a statement of accepted facts. On examination, he noted an extremely limited range of left shoulder motion in all planes and no sensory loss. Dr. Hill related appellant's symptoms of chronic left shoulder and arm pain. He opined that according to Table 15-5 appellant had a class 3, grade C impairment of the left upper extremity due to total arthroplasty of the left shoulder, equaling 40 percent permanent impairment of the left upper extremity.

An OWCP medical adviser reviewed the record on April 24, 2015. He concurred that appellant reached MMI as of Dr. Hill's April 8, 2015 examination. The medical adviser agreed with Dr. Hill's calculation of 40 percent permanent impairment of the left arm. He explained that subtracting the 23 percent impairment of the left arm previously awarded from the 40 percent found by Dr. Hill, resulted in 17 percent additional permanent impairment of the left upper extremity.

In a June 3, 2015 report, Dr. Brooker found severely restricted left shoulder ROM in all planes. Appellant returned to full-time, light-duty work on June 23, 2015.

By decision dated July 22, 2016, OWCP granted appellant a schedule award for an additional 17 percent permanent impairment of the left upper extremity, above the 23 percent previously awarded, for a total 40 percent permanent impairment. The period of the award, equivalent to 53.04 weeks, ran from June 28, 2015⁴ to July 3, 2016.

LEGAL PRECEDENT

Section 8149 of FECA delegates to the Secretary of Labor the authority to prescribe rules and regulations for the administration and enforcement of FECA. The Secretary of Labor has vested the authority to implement the FECA program with the Director of OWCP.⁵ Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.⁶ 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁷

The sixth edition of the A.M.A., *Guides* was first printed in 2008. Within months of the initial printing, the A.M.A. issued a 52-page document entitled “Clarifications and Corrections, Sixth Edition, *Guides to the Evaluation of Permanent Impairment*.” The document included various changes to the original text, intended to serve as an *erratum*/supplement to the first printing of the A.M.A., *Guides*. In April 2009, these changes were formally incorporated into the second printing of the sixth edition.

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁸ The Board has approved the use by OWCP of the A.M.A.,

⁴ In a June 12, 2015 letter, OWCP advised appellant that an OWCP medical adviser found that he sustained an additional 17 percent impairment of the left upper extremity. It requested that appellant elect when to receive the award as he was then in receipt of wage-loss compensation for temporary total disability. Appellant elected to delay receipt of the award until he returned to work.

⁵ See 20 C.F.R. §§ 1.1-1.4.

⁶ For a complete loss of use of an arm, an employee shall receive 312 weeks’ compensation. 5 U.S.C. § 8107(c)(1).

⁷ 20 C.F.R. § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

Guides for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁹

ANALYSIS

The issue on appeal is whether appellant has established that he sustained greater than 40 percent impairment of the left upper extremity, for which he received schedule awards.

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

The Board has found that OWCP has inconsistently applied Chapter 15 of the sixth edition of the A.M.A., *Guides* when granting schedule awards for upper extremity claims. No consistent interpretation has been followed regarding the proper use of the DBI or the ROM methodology when assessing the extent of permanent impairment for schedule award purposes.¹⁰ The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.¹¹ In *T.H.*, the Board concluded that OWCP physicians are at odds over the proper methodology for rating upper extremity impairment, having observed attending physicians, evaluating physicians, second opinion physicians, impartial medical examiners, and district medical advisers use both DBI and ROM methodologies interchangeably without any consistent basis. Furthermore, the Board has observed that physicians interchangeably cite to language in the first printing or the second printing when justifying use of either ROM or DBI methodology. Because OWCP's own physicians are inconsistent in the application of the A.M.A., *Guides*, the Board finds that OWCP can no longer ensure consistent results and equal justice under the law for all claimants.¹²

In light of the conflicting interpretation by OWCP of the sixth edition with respect to upper extremity impairment ratings, it is incumbent upon OWCP, through its implementing regulations and/or internal procedures, to establish a consistent method for rating upper extremity impairment. In order to ensure consistent results and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the July 22, 2016 decision. Following OWCP's development of a consistent method for calculating permanent impairment for upper extremities to be applied uniformly, and such other development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for an upper extremity schedule award.

CONCLUSION

The Board finds this case not in posture for decision.

⁹ *Isidoro Rivera*, 12 ECAB 348 (1961).

¹⁰ *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

¹¹ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹² *Supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: April 24, 2017
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