

who utilized the range of motion (ROM) method under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

FACTUAL HISTORY

On June 4, 2012 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging a right shoulder injury on May 26, 2012 as a result of pulling trays in the performance of duty. OWCP accepted the claim for complete right rotator cuff rupture, subscapularis and supraspinatus sprains of the right shoulder and upper arm, and other affections of the right shoulder region not elsewhere classified. It authorized a September 19, 2012 right shoulder surgery.

Under OWCP File No. xxxxxx188, OWCP had previously accepted right rotator cuff syndrome and a recurrent dislocation of the right shoulder region on December 6, 2000 for which appellant had received a schedule award for eight percent permanent impairment of the right upper extremity on December 31, 2003.

On April 23, 2013 appellant filed a claim for an additional schedule award (Form CA-7).

In a March 28, 2013 report, Dr. Reichhardt reviewed appellant's medical history and provided results on examination. He found that appellant's right shoulder forward flexion was 119 degrees, extension 38 degrees, adduction 36 degrees, abduction 87 degrees, internal rotation 50 degrees, and external rotation 49 degrees. Appellant had a positive Hawkin's impingement sign for anterior and lateral shoulder pain and Speed's testing was positive for anterior shoulder pain. He had normal supraspinatus, infraspinatus, and subscapularis strength. Dr. Reichhardt diagnosed right shoulder pain and opined that appellant had reached maximum medical improvement (MMI) as of March 29, 2013. Under the sixth edition of the A.M.A., *Guides*, he determined that appellant had 11 percent permanent impairment of the right upper extremity based on the ROM method of calculating right shoulder impairment.

In an April 26, 2013 letter, OWCP notified appellant of the deficiencies of his schedule award claim and afforded him 60 days to submit additional evidence and respond to its inquiries.

On May 1, 2013 Dr. Reichhardt indicated that three warm-up stretches through each of the planes of movement were performed and three sequential ROM tests were performed. He indicated that appellant had a *QuickDASH* score of 38.6 and reiterated his 11 percent permanent impairment rating.

On June 20, 2013 an OWCP medical adviser reviewed the evidence of record and explained his opinion that Dr. Reichhardt had used the less preferred ROM method to determine appellant's impairment rating. He further explained that the *QuickDASH* score could not be used to assign impairment as appellant had not answered two of the questions. Utilizing the diagnosis-based impairment (DBI) method of calculating permanent impairment, OWCP's medical adviser found that, based upon the findings of Dr. Reichhardt and the sixth edition of the A.M.A., *Guides*, appellant had five percent permanent impairment of the right upper extremity. He determined that appellant's date of MMI was May 1, 2013, the date of Dr. Reichhardt's examination. OWCP's medical adviser indicated that appellant's most impairing diagnosis in

the right shoulder region was partial rotator cuff tear with residual dysfunction, which was a class 1 diagnosis. He assigned a grade modifier of 1 for Functional History (GMFH) on the basis that appellant continued to have shoulder pain and loss of ROM. OWCP's medical adviser assigned a grade modifier of 1 for Physical Examination (GMPE) based on Dr. Reichhardt's ROM findings as applied to Table 15-34,³ page 475, of the A.M.A., *Guides* and because there was tenderness to palpation and no other objective deficits. OWCP's medical adviser assigned a grade modifier of 4 for Clinical Studies (GMCS) based on diagnostic testing which showed tearing. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), he found that (1-1) + (1-1) + (4-1) resulted in a net grade modifier of 3,⁴ resulting in an impairment class 1, grade E, equaling five percent permanent impairment of the right upper extremity under Table 15-5,⁵ page 402, of the A.M.A., *Guides*.

By decision dated July 3, 2013, OWCP denied appellant's claim for an additional schedule award, indicating that OWCP's medical adviser assigned five percent permanent impairment of the right upper extremity. As appellant had previously received a schedule award for eight percent permanent impairment of the right upper extremity under OWCP File No. xxxxxx188, the medical evidence therefore did not support an increase over that already granted.

On July 30, 2013 appellant requested an oral hearing before an OWCP hearing representative and submitted reports from Dr. Joshua T. Snyder, a Board-certified orthopedic surgeon, who indicated that he had performed a right shoulder arthroscopy and revision rotator cuff repair on September 19, 2012 and indicated that appellant continued to have ROM issues.

On March 1, 2013 Dr. John Charbonneau, a Board-certified occupational medicine specialist, diagnosed right shoulder strain, biceps tear and tendinitis, and a high-grade lesion.

In a report dated July 9, 2013, Dr. Reichhardt explained that questions 9 and 10 on the *QuickDASH* form had been answered by indicating that appellant's shoulder pain was between a two and three out of five for both of these areas. He also reiterated that his impairment rating was previously based on the ROM method.

A telephonic hearing was held before an OWCP hearing representative on December 9, 2013.

By decision dated February 7, 2014, OWCP's hearing representative affirmed the July 3, 2013 schedule award decision.

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

³ Table 15-34, page 475, of the sixth edition of the A.M.A., *Guides* is entitled *Shoulder Range of Motion*.

⁴ In his report, OWCP's medical adviser identified the net adjustment as two because the final net adjustment calculation resulted in the maximum movement of two grades to the right of grade C to grade E.

⁵ Table 15-5, page 401-05, of the sixth edition of the A.M.A., *Guides* is entitled *Shoulder Regional Grid*.

vested the authority to implement the FECA program with the Director of the Office of Workers' Compensation Programs.⁶ 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.⁷ 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 A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁸

The sixth edition of the A.M.A., *Guides* was first printed in 2008. Within months of the initial printing, the A.M.A., *Guides* 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).⁹ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.¹⁰

ANALYSIS

The issue on appeal is whether appellant established that he sustained more than an eight percent permanent impairment to the right upper extremity, for which he previously received a schedule award.

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.¹¹ The purpose of the use of uniform standards is to ensure consistent results and to ensure equal

⁶ See 20 C.F.R. §§ 1.1-1.4.

⁷ For a complete loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

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

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (February 2013); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

¹⁰ *Isidoro Rivera*, 12 ECAB 348 (1961).

¹¹ *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

justice under the law to all claimants.¹² 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.¹³

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 February 7, 2014 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.

¹² *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹³ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2014 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.¹⁴

Issued: February 15, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁴ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.