

to have dislocated his right shoulder. Appellant stopped work on March 7, 2014, and he received continuation of pay. On April 24, 2014 he underwent right shoulder surgery. On May 1, 2014 OWCP accepted appellant's traumatic injury claim for right biceps tendon rupture and complete rupture of the right rotator cuff, and it retroactively authorized appellant's April 24, 2014 surgery. Appellant received wage-loss compensation for temporary total disability through August 22, 2014, at which time he returned to work in a part-time, limited-duty capacity. Effective September 8, 2014, he resumed his full-time, regular duties without restrictions.

On October 21, 2014 appellant filed a claim for a schedule award (Form CA-7). In support of his claim, he submitted a September 19, 2014 medical report from Dr. Scott P. Fielder, a Board-certified orthopedic surgeon.² Dr. Fielder noted that appellant was seen in follow up for his April 24, 2014 right shoulder surgery. He presented examination findings and opined that maximum medical improvement was reached on September 19, 2014. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (hereinafter A.M.A., *Guides*), Dr. Fielder found 24 percent right upper extremity permanent impairment. The overall rating included 10 percent permanent impairment due to appellant's distal clavicle resection and 14 percent permanent impairment due to loss of shoulder range of motion (ROM).³

In a January 30, 2015 report, OWCP's district medical adviser (DMA), Dr. Morley Slutsky, Board-certified in occupational medicine, reviewed Dr. Fielder's impairment rating, and noted his disagreement with the overall finding of 24 percent permanent impairment of the right upper extremity. He noted, among other things, that Dr. Fielder used the ROM method with invalid measurements. Dr. Slutsky further noted that "the ROM method [was] to be used only when no other approach [was] available."

In contrast, Dr. Slutsky used the diagnosis-based impairment (DBI) methodology, which he noted was the preferred rating method under the sixth edition of the A.M.A., *Guides*. Applying Table 15-5, Shoulder Regional Grid, A.M.A., *Guides* 401-05 (6th ed. 2009), he found that appellant's distal clavicle excision represented the most impairing Class of Diagnosis (CDX 1), with a default (grade C) rating of 10 percent upper extremity impairment. Dr. Slutsky then assigned grade modifiers for Functional History (GMFH - 1) and Clinical Studies (GMCS - 4), and calculated a net adjustment of +2.⁴ This resulted in a final adjustment to grade E, which represented 12 percent permanent impairment of the right upper extremity under Table 15-5.

By decision dated May 14, 2015, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right upper extremity based on the DMA's January 30,

² Dr. Fielder performed appellant's April 24, 2014 right shoulder surgery, which included rotator cuff reconstruction, partial claviclectomy, biceps tenodesis, and arthroscopic limited debridement.

³ Dr. Fielder noted that appellant's 160 degrees of forward flexion represented one percent right upper extremity impairment and 100 degrees of abduction represented four percent impairment. He also indicated that appellant had 25 percent strength deficit for flexion and abduction, which represented an additional 6 percent and 3 percent upper extremity impairment, respectively.

⁴ Net Adjustment = (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). See Section 15.3d, A.M.A., *Guides* 411 (6th ed. 2009).

2015 report. The award covered a period of 37.44 weeks from September 19, 2014 to June 8, 2015.

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.⁵ The Secretary of Labor has vested the authority to implement the FECA program with the Director of OWCP.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. 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 is whether appellant met his burden of proof to establish more than 12 percent right upper extremity permanent impairment, for which he previously received a schedule award. The Board finds that this case is not in posture for decision.

⁵ 5 U.S.C. § 8149.

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 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).

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

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. As of the May 14, 2015 decision, no consistent interpretation had 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 justice under the law to all claimants.¹² In *T.H.*, the Board concluded that OWCP physicians were at odds over the proper methodology for rating upper extremity impairment, having observed attending physicians, evaluating physicians, second opinion physicians, impartial medical examiners, and DMA use both DBI and ROM methodologies interchangeably without any consistent basis.¹³ Furthermore, the Board has observed that physicians were interchangeably citing to language in the first printing or the second printing when justifying use of either ROM or DBI methodology. The Board found that because OWCP's own physicians have been inconsistent in the application of the A.M.A., *Guides*, OWCP could no longer ensure consistent results and equal justice under the law for all claimants.¹⁴

In order to ensure consistent results and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the May 14, 2015 decision. Following further 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.

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

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

¹³ *Supra* note 11.

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2015 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: June 15, 2017
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