

dislocation of the left humerus. On October 22, 2015 appellant underwent a left shoulder arthroscopy with Bankart repair.

Appellant, on May 17, 2016, filed a claim for a schedule award (Form CA-7). By letter dated June 2, 2016, OWCP requested that he submit an impairment evaluation from his attending physician addressing the extent of any employment-related impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

Appellant advised OWCP on August 30, 2016 that his physician did not provide impairment ratings.

On December 29, 2016 OWCP referred appellant to Dr. Surya Raguthu, a Board-certified physiatrist, for a second opinion examination. In a report dated January 5, 2017, Dr. Raguthu noted that appellant complained of weakness and pain in the left shoulder. On examination of the left shoulder he found tenderness at the biceps and range of motion “grossly within normal limits.” Dr. Raguthu diagnosed a left shoulder superior glenoid labrum lesion and anterior dislocation of the left humerus. He found that appellant obtained maximum medical improvement on January 5, 2017. Using the shoulder regional grid set forth at Table 15-5 on page 404 of the sixth edition of the A.M.A., *Guides*, Dr. Raguthu identified the diagnosis as a class 1 anterior dislocation of the left humerus and SLAP (superior labral tear from anterior to posterior) lesion, which yielded a default value of three percent. He applied grade modifiers of one for functional history and physical examination and a grade modifier of two for clinical studies to find an adjustment of one from the default value, or four percent permanent impairment of the left upper extremity.

An OWCP medical adviser reviewed the evidence on March 2, 2017. He found that Dr. Raguthu erred in applying a grade modifier for clinical studies as it was used to identify the diagnosis in the diagnosis-based impairment (DBI) grid. The medical adviser determined that appellant had three percent permanent impairment of the left upper extremity due to his superior glenoid labrum lesions using Table 15-5 on page 404 of the A.M.A., *Guides*.

By decision dated March 17, 2017, OWCP granted appellant a schedule award for three percent permanent impairment of the left upper extremity. The period of the award ran for 9.36 weeks from January 5 to March 11, 2017.

On appeal appellant contends that the opinion of Dr. Raguthu is entitled to more weight than that of OWCP’s medical adviser as he performed an examination. He further maintains that he does not have normal motion of the shoulder.

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.² Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of

² See 20 C.F.R. §§ 1.1-1.4.

use of specified members, functions, and organs of the body.³ 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.⁴

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).⁵ 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.⁶

ANALYSIS

The issue on appeal is whether appellant has more than three percent permanent impairment of the left upper extremity.

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 had been followed regarding the proper use of the DBI or the range of motion (ROM) methodology when assessing the extent of permanent impairment for schedule award purposes.⁷ The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.⁸ 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

³ For a complete loss of use of an arm, an employee shall receive 312 weeks’ compensation. 5 U.S.C. § 8107(c)(1).

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

⁵ *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).

⁶ *Isidoro Rivera*, 12 ECAB 348 (1961).

⁷ *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

⁸ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

methodologies interchangeably without any consistent basis. Furthermore, the Board 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 found that OWCP could no longer ensure consistent results and equal justice under the law for all claimants.⁹

In order to ensure a consistent result and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the March 17, 2017 decision. Utilizing 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 that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 26, 2017
Washington, DC

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

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

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

⁹ *Supra* note 7.