



the patient grabbed his right arm and flung it aside. He alleged injury to his right upper arm and shoulder. OWCP accepted the claim for right shoulder sprain and right rotator cuff syndrome and paid benefits, including a December 1, 2010 right shoulder surgery. Appellant returned to regular duty on April 11, 2011 and retired from the employing establishment on July 2011.

On November 18, 2011 appellant filed a Form CA-7 claim for a schedule award. In a September 29, 2011 report, Dr. Bradley K. Peck, a Board-certified orthopedic surgeon, noted the history of injury and set forth examination findings. He stated that appellant's right shoulder chronic complete rotator cuff tear, which was repaired on December 1, 2010, was secure and functional. Dr. Peck opined, however, that appellant has 25 percent loss of use of his right arm due to his rotator cuff problems with his residual decreased motion and strength. No reference was made to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>2</sup> (hereinafter A.M.A., *Guides*) or any calculations for the impairment provided.

In a July 13, 2012 letter, OWCP advised appellant that the medical evidence received was insufficient to support his claim. It advised him of the medical evidence necessary to establish his entitlement to a schedule award and afforded him 30 days to provide additional documentation.

In a July 27, 2012 report, Dr. Amanda Hagen, Board-certified in preventative medicine, provided a history of the work injury and appellant's course of treatment. She noted examination findings and opined that maximum medical improvement had been reached as it had been over two years since his original injury. Under the sixth edition of the A.M.A., *Guides*, Dr. Hagen opined that appellant had five percent right upper extremity impairment. Under Table 15-34 for shoulder range of motion, she assigned three percent impairment for flexion to 120 degrees; extension zero percent; internal rotation zero percent; one percent for external rotation to 70 degrees; abduction zero percent and adduction zero percent, for a total four percent. Under Table 15-35, range of motion grade modifiers, Dr. Hagen found a grade modifier 1. Under Table 15-7, she found grade modifier functional history of 2. Dr. Hagen stated that this was a net modifier of 1. Under Table 15-36, this amounted to a total of 4.5 percent, which rounds to 5 percent total permanent impairment.

On February 12, 2013 an OWCP medical adviser reviewed the statement of accepted facts and Dr. Hagen's report. He opined that maximum medical improvement was reached July 27, 2012, the date of Dr. Hagen's examination. The medical adviser stated that Dr. Hagen incorrectly calculated five percent permanent impairment under the Table 15-34, range of motion method. He noted that Dr. Hagen correctly calculated four percent under Table 15-34 for three percent flexion and one percent external rotation. The medical adviser advised that four percent is the net modifier under Table 15-36, functional history grade adjustment for range of motion. Dr. Hagen got a value of 2 for grade modifier functional history under Table 15-7. Therefore adjustment was made of +1. The grade adjustment under Table 15-36, page 477 for net modifier of one was five percent of total range of motion impairment. The medical adviser multiplied four percent by five percent to equal four percent. He noted that somehow Dr. Hagen got 4.5

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

percent and rounded it off to 5 percent, which was incorrect. The medical adviser noted that even if the grade modifier functional history was +2, it would only increase the 4 percent by 10 percent or .4, which still would not equal 5 percent. Accordingly, he provided a final rating of four percent permanent impairment of the right upper extremity.

By decision dated May 20, 2013, OWCP granted appellant a schedule award for four percent right arm permanent impairment. The award ran for 12.48 weeks from July 27 to October 22, 2012.

On May 30, 2013 appellant requested an oral hearing, which was held telephonically on February 11, 2014. He advised that he had residual symptoms as a result of his torn rotator cuff and surgery. Appellant also asserted that OWCP should have relied on Dr. Peck's assessment. No additional evidence was received.

By decision dated March 31, 2014, OWCP's hearing representative affirmed OWCP's May 20, 2013 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 vested the authority to implement the FECA program with the Director of OWCP.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.

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<sup>3</sup> See 20 C.F.R. §§ 1.1-1.4.

<sup>4</sup> For a complete loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

<sup>5</sup> 20 C.F.R. § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

The issue on appeal is whether appellant has established that he sustained more than four percent permanent impairment of his right arm, for which he 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 diagnosis-based impairment (DBI) or the range of motion methodology when assessing the extent of permanent impairment for schedule award purposes.<sup>8</sup> The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.<sup>9</sup> 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 range of motion 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 range of motion 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.<sup>10</sup>

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 March 31, 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

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<sup>6</sup> 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).

<sup>7</sup> *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>8</sup> *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

<sup>9</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>10</sup> *Supra* note 8.

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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 31, 2014 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.<sup>11</sup>

Issued: March 13, 2017  
Washington, DC

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

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

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<sup>11</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.