

ISSUE

The issue is whether appellant has established permanent impairment of her upper extremities, warranting schedule award compensation.

FACTUAL HISTORY

On August 3, 2004 appellant, then a 49-year-old program support clerk, filed an occupational disease claim (Form CA-2) alleging that her duties involved repetitive key stroking for billing medical claims in the performance of duty. She noted that she first became aware of her claimed condition and of its relation to her federal employment on July 28, 2004.

On February 1, 2006 OWCP accepted her claim for bilateral carpal tunnel syndrome.

On January 8, 2016 appellant filed a claim for a schedule award (Form CA-7).

In support of her claim, appellant submitted a March 20, 2016 impairment rating from Dr. Catherine Watkins Campbell, Board-certified in occupational medicine and family medicine, who found zero percent right and left upper extremity impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ Dr. Watkins Campbell provided range of motion (ROM) measurements and referred to the criteria for entrapment neuropathy of carpal tunnel syndrome Appendix 15-B.⁴ She opined that appellant did not meet the criteria rating for entrapment neuropathy of carpal tunnel syndrome.

OWCP's district medical adviser (DMA), Dr. Herbert White, Jr., reviewed the claim on April 8, 2016 and also found zero percent right and left upper extremity impairment under the A.M.A., *Guides*.⁵ The DMA relied upon the "preferred" diagnosis-based impairment (DBI) methodology. His rating was based upon the anatomic region of the wrist and wrist pain under Table 15-3, Wrist Regional Grid, A.M.A., *Guides*, 395.

By decision dated October 3, 2016, OWCP denied appellant's schedule award claim, finding that appellant has not established permanent impairment of her upper extremities, warranting a schedule award. On October 10, 2016 appellant, through counsel, requested a telephonic hearing, which was held on May 10, 2017.

By decision dated June 27, 2017, OWCP's hearing representative affirmed the October 3, 2016 decision, finding that appellant had not established permanent impairment of her upper extremities, warranting a schedule award.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ A.M.A., *Guides* 487.

⁵ Dr. White is Board-certified in occupational medicine.

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.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*.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 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 justice under the

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 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).

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

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 cited to language in the first printing or the second printing when justifying use of either ROM or DBI methodology.¹³ 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.¹⁴

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 apply 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 June 27, 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.¹⁵

CONCLUSION

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

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

¹³ *See supra* note 11.

¹⁴ *T.H.*, *supra* note 11.

¹⁵ FECA Bulletin No. 17-06 (issued May 8, 2017).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: December 10, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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