



attending Board-certified orthopedic surgeon, advised that appellant was totally disabled from work. On March 10, 2016 OWCP accepted the claim for left shoulder rotator cuff tear or rupture and left shoulder stiffness. Appellant thereafter filed a claim for compensation (Form CA-7) beginning March 14, 2016. OWCP paid her appropriate compensation on the periodic compensation rolls as of April 12, 2016.

On May 18, 2016 Dr. Johnson performed left shoulder arthroscopy with rotator cuff repair, subacromial decompression, and labral debridement. Appellant returned to two hours daily of light-duty work on August 25, 2016, and received appropriate intermittent compensation. She returned to full-duty work on September 27, 2017.

On October 4, 2016 appellant filed a claim for a schedule award (Form CA-7). In a November 8, 2016 report, Dr. Johnson indicated that he had last examined her on September 22, 2016. He advised that appellant had a good surgical result with resolution of the majority of her pain, but had remaining limitations in active external rotation to 30 degrees and active forward flexion to 120 degrees. Dr. Johnson opined that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>2</sup> this yielded eight percent permanent left upper extremity impairment.

OWCP forwarded the medical record to its medical adviser for review. In a January 27, 2017 report, Dr. Herbert White, Jr., Board-certified in occupational medicine and an OWCP medical adviser, noted his review of the record including Dr. Johnson's reports. He indicated that appellant had achieved maximum medical improvement on September 22, 2016, the date of the evaluation Dr. Johnson used for his impairment rating. The medical adviser utilized Table 15-5, Shoulder Regional Grid, of the sixth edition of the A.M.A., *Guides*, which identifies diagnosis-based impairments (DBI) of the shoulder. He determined that appellant had a class 1 impairment due to the rotator cuff tear diagnosis. Dr. White assigned grade modifiers of 1 for functional history and physical examination, and a modifier of 2 for clinical studies. After applying the net adjustment formula, he concluded that appellant had four percent permanent impairment of the left upper extremity due to rotator cuff tear. The medical adviser also provided an impairment evaluation for labral tear, finding a class 1 impairment under Table 15-5. He again found grade modifiers of 1 for functional history and physical examination, and a modifier of 2 for clinical studies. After applying the net adjustment formula, Dr. White concluded that appellant had four percent permanent impairment of the left arm due to labral tear. He indicated that he could not tell what method Dr. Johnson used in rating her impairment and, after noting that the A.M.A., *Guides* direct that, if more than one diagnosis can be used, the highest impairment rating should be used. Dr. White concluded that, in this case, each diagnosis yielded four percent permanent impairment of the left upper extremity.

By decision dated March 10, 2017, OWCP granted appellant a schedule award for four percent permanent impairment of the left upper extremity, to run for 12.48 weeks, from September 27 to December 23, 2016.

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

## 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 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., *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).<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 more than four percent permanent impairment of the left upper extremity, for which she 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 range of motion (ROM) methodology when assessing the extent of permanent impairment for schedule

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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).

<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 & Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

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

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 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 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 have been 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.<sup>10</sup>

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 10, 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.<sup>11</sup>

### **CONCLUSION**

The Board finds this case not in posture for decision.

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<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.

<sup>11</sup> FECA Bulletin No. 17-0006 (issued May 8, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 10, 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: January 12, 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