

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than one percent permanent impairment of the right upper extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On January 9, 2012 appellant, then a 50-year-old automation clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained carpal tunnel syndrome due to sweeping mail while in the performance of duty. OWCP accepted the claim for right wrist sprain and bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on February 18, 2013. OWCP paid appellant wage-loss compensation and medical benefits.

On November 13, 2013 appellant filed a claim for a schedule award (Form CA-7).

OWCP developed the claim, and by decision dated March 4, 2015, it denied appellant's claim for a schedule award, finding that the evidence submitted was insufficient to establish that he sustained permanent impairment of a scheduled member due to his accepted work injury.

On March 9, 2015 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated July 22, 2015, Dr. Catherine Watkins Campbell, Board-certified in family practice and occupational medicine, noted appellant's history of injury and treatment. She utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (A.M.A., *Guides*).³ Dr. Watkins Campbell provided findings which recorded that range of motion of the right wrist measured 64, 64, 60 degrees of flexion, 44, 44, 50 degrees of extension, 30, 38, 28 degrees of radial deviation and 10, 10 degrees of ulnar deviation. She determined that appellant had a three centimeter vertical scar across the volar aspect of the wrist and that there was mild tenderness over the scar and at the first metacarpal phalangeal (MCP) joint. Dr. Watkins Campbell determined that normal strength in the right wrist was noted. Additionally a grade of 4/5 strength deficit of finger flexion was noted. Dr. Watkins Campbell found two-point discrimination was abnormal, that appellant had a negative Tinel's sign and a positive Phalen's test at forty. She found that appellant reached MMI on May 22, 2015 and determined that appellant had seven percent permanent impairment to the right upper extremity.⁴ The seven percent permanent right upper extremity impairment rating was based on residuals of right wrist sprain and pain post-surgery and right carpal tunnel syndrome postsurgery under Table 15-3, Wrist

³ A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.* at 475, Table 15-34.

Regional Grid, A.M.A., *Guides*.⁵ Dr. Watkins Campbell also referenced Table 15-32, Wrist Range of Motion, A.M.A., *Guides*.⁶

By decision dated September 2, 2015, the hearing representative found that the case was not in posture for decision as further medical development was necessary. She set aside the prior decision and remanded the case for a *de novo* decision. OWCP found that the case should be referred to an OWCP district medical adviser (DMA), for a detailed and rationalized opinion concerning the extent of appellant's impairment utilizing the A.M.A., *Guides*.

By letter dated September 22, 2015, OWCP requested that a DMA provide an opinion regarding the extent of appellant's impairment utilizing the A.M.A., *Guides*.

In a September 26, 2015 report, the DMA utilized the physical findings of Dr. Watkins Campbell and utilized the A.M.A., *Guides*. He explained the inconsistencies in Dr. Watkins Campbell's report and opined that appellant reached MMI on May 22, 2015 and had one percent impairment of the right upper extremity. The DMA's one percent right upper extremity impairment rating was based on residuals of right wrist sprain and pain postsurgery and right carpal tunnel syndrome postsurgery under Table 15-3, Wrist Regional Grid, A.M.A., *Guides*.⁷ He also referenced Table 15-32, Wrist Range of Motion, A.M.A., *Guides*.⁸ The DMA explained that the diagnosis-based method was the preferred rating method and would be used for final impairment calculations.

On October 30, 2015 appellant again requested a schedule award (Form CA-7).

By decision dated January 6, 2016, OWCP granted appellant a schedule award for one percent permanent impairment of his right upper extremity. The award covered a period of 3.12 weeks, from May 22 to June 12, 2015. OWCP based the award on the DMA's September 26, 2015 impairment rating, noting that the DMA determined that appellant's physician had "incorrectly applied the [A.M.A., *Guides*]...."

On January 15, 2016 appellant, through counsel, requested a telephonic hearing, which was held on September 12, 2016. He argued that there was an unresolved conflict in medical opinion.

By decision dated December 20, 2016, the hearing representative affirmed the January 6, 2016 schedule award 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

⁵ *Id.* at 395, Table 15-3.

⁶ *Id.* at 473, Table 15-32.

⁷ *Supra* note 5.

⁸ *Supra* note 6.

vested the authority to implement the FECA program with the Director of OWCP.⁹ 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.¹⁰ 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.¹¹

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).¹² 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.¹³

ANALYSIS

The issue on appeal is whether appellant has met his burden of proof to establish that he has greater than one percent permanent impairment of his right upper extremity for which he 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 ROM methodology when assessing the extent of permanent impairment for schedule award purposes.¹⁴ The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.¹⁵ 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,

⁹ See 20 C.F.R. §§ 1.1-1.4.

¹⁰ For a complete loss of use of an arm, an employee shall receive 312 weeks’ compensation. 5 U.S.C. § 8107(c)(1).

¹¹ 20 C.F.R. § 10.404; see also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

¹² 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 (March 2017).

¹³ *Isidoro Rivera*, 12 ECAB 348 (1961).

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

¹⁵ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

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 observed that physicians interchangeably cited to language in the first printing or the second printing when justifying use of either ROM or DBI methodology. Because OWCP's own physicians were 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.¹⁶

In order to ensure consistent results and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the December 20, 2016 decision. Following OWCP's development of a consistent method for calculating permanent impairment for upper extremities to be applied uniformly,¹⁷ 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.

¹⁶ *T.H.*, *supra* note 14.

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

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2016 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 27, 2018
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