

the right lower extremity;² and a total of 26 percent permanent impairment of the left lower extremity.³

On July 9, 2016 appellant filed a claim for an additional schedule award (Form CA-7) due to increased permanent impairment of the upper and lower extremities.

By development letter dated July 26, 2016, OWCP requested that appellant submit a report from his attending physician containing an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

In response, OWCP received an August 9, 2016 letter from Paul S. Pepich, a physical therapist, who conducted an impairment evaluation of appellant's bilateral knee and shoulder conditions utilizing the diagnosis-based impairment (DBI) method under the sixth edition of the A.M.A., *Guides*. Mr. Pepich found four percent permanent impairment of each lower extremity and four percent permanent impairment of each upper extremity. He concluded that appellant had reached maximum medical improvement (MMI). Subsequently, in an October 18, 2016 letter, Mr. Pepich, utilizing the range of motion (ROM) method under the sixth edition of the A.M.A., *Guides* for rating appellant's bilateral feet conditions, found 9 percent permanent impairment of the right foot and 13 percent permanent impairment of the left foot.

Dr. Arthur S. Harris, an OWCP medical adviser and Board-certified orthopedic surgeon, reviewed Mr. Pepich's findings and, after applying the DBI methodology, concluded that appellant had no additional permanent impairment of either the upper or lower extremities. He noted that Mr. Pepich was a physical therapist and that, since his impairment ratings had not been verified by a physician, they were invalid. Consequently, OWCP, by a December 5, 2016 decision, denied appellant's claim for an increased schedule award compensation for additional permanent impairment of his bilateral upper and lower extremities. Appellant subsequently requested a review of the written record. By February 2, 2017 nonmerit decision, a representative of OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record, as untimely filed.

To support a claim for a schedule award, an employee must submit an impairment rating from a qualified physician that is in accordance with the A.M.A., *Guides*.⁵

Pursuant to OWCP's procedures, if a claimant does not provide an impairment evaluation from his/her physician when requested, and there is an indication of permanent impairment in the medical evidence of file, the claims examiner should refer the claim for a second opinion

² For the right lower extremity, OWCP initially granted appellant a schedule award for 3 percent permanent impairment, and then issued an additional schedule award for 23 percent permanent impairment.

³ For the left lower extremity, OWCP initially granted appellant a schedule award for 4 percent permanent impairment, and then issued an additional schedule award for 22 percent permanent impairment.

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ *L.W.*, Docket No. 16-1317 (issued June 21, 2017); *E.O.*, Docket No. 12-0517 (issued July 6, 2012); *James Robinson, Jr.*, 53 ECAB 417 (2002).

evaluation. The claims examiner may also refer the case to the district medical adviser prior to scheduling a second opinion examination to determine if the evidence in the file is sufficient for the district medical adviser to provide an impairment rating.⁶

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.⁷ Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.⁸

The Board concludes that Mr. Pepich, in his August 9 and October 18, 2016 reports, indicated that appellant had reached MMI, and had an increased impairment. OWCP's medical adviser then determined that Mr. Pepich's findings were insufficient to determine the nature and extent of any increased impairment as he is a physical therapist and his reports were not countersigned by a physician. Thus, the medical adviser opined that Mr. Pepich's examination was invalid. As there is an indication of permanent impairment in the medical evidence of file, OWCP should, therefore, have obtained an opinion from a second opinion physician with regard to appellant's permanent impairment of his bilateral upper and lower extremities.⁹

On remand OWCP shall refer appellant to an appropriate specialist for a medical opinion on the degree of appellant's additional permanent impairment due to his bilateral upper and lower extremity conditions. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.¹⁰ Accordingly,

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 2017).

⁷ See *Richard E. Simpson*, 55 ECAB 490 (2004).

⁸ See *M.E.*, Docket No. 16-0770 (issued July 26, 2016).

⁹ *Supra* note 9.

¹⁰ In light of the Board's disposition regarding the schedule award issue, the issue regarding the denial of the request for review of the written record as untimely filed is rendered moot.

IT IS HEREBY ORDERED THAT the February 2, 2017 and December 5, 2016 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 22, 2019
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