

impairment of the right upper extremity. The period of the award ran from January 12, 2015 through February 9, 2016.

Appellant continued to submit medical evidence pertaining to her right upper extremity permanent impairment and on May 18, 2015 requested a telephonic hearing before an OWCP hearing representative. By decision dated March 2, 2016, an OWCP hearing representative affirmed the May 5, 2015 schedule award. Appellant appealed to the Board on July 1, 2016.

By decision dated April 11, 2017, the Board set aside the March 2, 2016 decision.³ The Board found that OWCP had inconsistently applied Chapter 15 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*),⁴ regarding the proper use of either the diagnostic-based impairment (DBI) or range of motion (ROM) impairment methodologies in assessing the extent of permanent impairment. It remanded the case for OWCP to issue a *de novo* decision after development of a consistent method for calculating permanent impairment of the upper extremities.

In a decision dated July 14, 2017, OWCP denied appellant's claim for an additional schedule award. Appellant appealed to the Board on August 7, 2017.

By decision dated March 12, 2018, the Board set aside the July 14, 2017 OWCP decision.⁵ The Board found that, while the district medical adviser (DMA) had indicated that appellant's right upper permanent impairment could be rated due to distal clavicle resection under the DBI methodology, he had failed to follow OWCP's procedures for ROM deficits, as the record did not reflect whether the treating physician had recorded three ROM measurements and had provided an opinion as to whether appellant's loss of ROM had an organic basis. The Board remanded the case for OWCP to issue a *de novo* decision regarding appellant's claim for an increased right upper extremity schedule award after further development of the claim pursuant to its procedures as required under FECA Bulletin 17-06 (issued May 8, 2017).

On April 13, 2018 OWCP requested that its DMA review the relevant medical evidence. It also instructed its DMA, in relevant part, that if the medical evidence of record was insufficient to render a rating based on ROM, where allowed under the A.M.A., *Guides*, to advise of the medical evidence necessary to complete the ROM rating.

On April 23, 2018 the DMA rated appellant's permanent impairment for right distal clavicle excision under the DBI methodology which represented appellant's impairment "due to the lack of triplicate ROM measurements as required by the [A.M.A.,] *Guides*."

By decision dated May 31, 2018, OWCP denied appellant's claim for an additional schedule award for an increased permanent impairment of the right upper extremity, finding that the medical evidence was insufficient to support an increase in the impairment previously awarded.

³ Docket No. 16-1462 (issued April 11, 2017).

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ Docket No. 17-1726 (issued March 12, 2018).

It found that the DMA had indicated that appellant's permanent impairment was evaluated under the DBI methodology due to a lack of triplicate ROM measurements.

The Board has duly considered the matter and finds that this case is not in posture for decision as OWCP has not complied with the Board's March 12, 2018 decision or its own procedures.

Although the DMA reviewed the relevant medical evidence and determined that the attending physician had not properly documented ROM measurements in triplicate and had not related whether appellant's loss of ROM had an organic basis, OWCP did not advise appellant of the deficiency or attempt to obtain the missing information to cure the deficiency as required by FECA Bulletin No. 17-06.⁶

The Board thus finds that the medical record with regard to the extent of appellant's permanent impairment requires further development consistent with FECA Bulletin No. 17-06 as OWCP did not obtain the necessary ROM evidence and the DMA was thereby precluded from calculating appellant's permanent impairment under both the ROM and DBI rating methods to determine which method produced the higher rating. After this and other such further development of the medical evidence as deemed necessary, OWCP shall issue a *de novo* decision.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (February 2013); see also Chapter 2.808.6(f)(2)(c) (February 2013); *D.H.*, Docket No. 18-0457 (issued September 18, 2019).

IT IS HEREBY ORDERED THAT the May 31, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: April 16, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board