

of the claim form the employing establishment indicated that he stopped work on January 17, 2018 and returned to work on January 19, 2018. OWCP accepted appellant's claim for a right shoulder contusion and a complete tear of the right shoulder rotator cuff.

April 4, 2018 hospital records from Dr. Navjot Kohli, a Board-certified orthopedic surgeon, indicated that appellant underwent open right rotator cuff repair and open right biceps tendinitis surgery. An August 7, 2018 certificate of return to work by Dr. Kohli indicated that appellant was under his care and could return to regular work on that date.

On March 25, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award. On the reverse side of the claim form the employing establishment indicated that he returned to his full-time, regular-duty job on August 7, 2018.

In a development letter dated March 30, 2020, OWCP informed appellant that additional evidence was required in support of his claim. It advised appellant of the type of medical evidence necessary to establish appellant's claim and afforded 30 days for him to provide the requested evidence. No response was received.

By decision dated May 4, 2020, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

A June 2, 2020 letter from Dr. Kohli indicated that appellant reached maximum medical improvement (MMI) on August 7, 2018. Dr. Kohli stated that, at that time, appellant still had limited range of motion of the shoulder, but that the shoulder had good strength. He indicated that appellant had sustained a 10 percent permanent impairment of the right shoulder based upon his continued shoulder pain, decreased range of motion, and numbness into the hands. Dr. Kohl also noted that he did not know of any preexisting injuries.

On June 23, 2020 appellant requested reconsideration.

By decision dated September 21, 2020, OWCP denied modification of its May 4, 2020 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA,² and its implementing federal regulations,³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent*

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404.

Impairment (A.M.A., *Guides*) as the uniform standard applicable to all claimants.⁴ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵

In addressing upper extremity impairments, the sixth edition requires identification of the impairment class of diagnosis (CDX), which is then adjusted by a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPE), and/or a grade modifier for clinical studies (GMCS).⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology *versus* the range of motion methodology for rating of upper extremity impairments.⁸

OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁹

The claimant has the burden of proof to establish that the condition for which a schedule award is sought is causally related to his or her employment.¹⁰ OWCP procedures provide that, if the claimant's physician provides an impairment report, the case should be referred to the district medical adviser (DMA) for review.¹¹

ANALYSIS

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

In support of his schedule award claim, appellant submitted Dr. Kohli's June 2, 2020 letter. Dr. Kohli related that appellant had reached MMI on August 7, 2018 at which time he had limited range of motion of the right shoulder and good strength. Dr. Kohli related that he attributed appellant's 10 percent permanent impairment to numbness in his right hand, right shoulder pain,

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁶ A.M.A., *Guides* 383-492.

⁷ *Id.* at 411.

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

⁹ *Supra* note 5 at Chapter 2.808.5b (March 2017).

¹⁰ *See D.K.*, Docket No. 20-0262 (issued August 16, 2021); *Veronica Williams*, 56 ECAB 367 (2005).

¹¹ *Supra* note 5 at Chapter 2.808.6e.

and a limited range of motion. He stated that he did not know of any preexisting injuries sustained by appellant.

The Board finds that OWCP failed to properly develop the employee's schedule award claim. OWCP's procedures provide that, if the claimant's physician provides an impairment report, the case should be referred to the DMA for review.¹²

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹³ While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.¹⁴

On remand OWCP should further develop the medical evidence by referring the medical record to a DMA to determine the extent of appellant's employment-related permanent impairment based on the A.M.A., *Guides* and the date he reached MMI. Following this and such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim.

CONCLUSION

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

¹² *Id.*

¹³ *T.O.*, Docket No. 18-0659 (issued August 8, 2019).

¹⁴ *T.O.*, *id.*; *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: September 9, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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