



condition in August 2006 and that it was caused or aggravated by his employment on December 13, 2006. OWCP accepted the claim for right shoulder sprain and rotator cuff tear. It paid benefits, including surgery for a right shoulder torn rotator cuff on April 2, 2007.

On August 26, 2008 appellant requested a schedule award claiming impairment to his right arm as a result of the August 1, 2006 work injury. In a May 14, 2008 report, Dr. David Weiss, an osteopath, noted the history of injury, appellant's medical course and set forth findings on examination. He found that appellant reached maximum medical improvement that day. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> Dr. Weiss rated 22 percent right upper extremity impairment.

On April 2, 2009 OWCP's medical adviser agreed that appellant reached maximum medical improvement on May 14, 2008 and that he sustained 22 percent right upper extremity impairment.

In a May 20, 2009 letter, OWCP informed appellant and Dr. Weiss that effective May 1, 2009 all permanent impairment determinations were completed in accordance with the sixth edition of the A.M.A., *Guides*. It requested that Dr. Weiss provide an impairment report in accordance with the sixth edition of the A.M.A., *Guides*.

In an October 14, 2009 letter appellant's attorney submitted Dr. Weiss's revised impairment evaluation under the sixth edition of the A.M.A., *Guides*. He requested OWCP process appellant's schedule award under the fifth edition of the A.M.A., *Guides* as his injury and application for a schedule award occurred before the sixth edition of the A.M.A., *Guides* became effective. In a May 14, 2008 report, Dr. Weiss applied the sixth edition of the A.M.A., *Guides* to his May 14, 2008 evaluation findings and found appellant had five percent right arm impairment.

In a November 17, 2009 letter, OWCP noted that the May 14, 2008 supplemental report from Dr. Weiss, in which he indicated that the sixth edition of the A.M.A., *Guides* was used, was dated prior to the effective date of the sixth edition of the A.M.A., *Guides*. It requested that Dr. Weiss provide another supplemental report which adhered to the requirements of the sixth edition of the A.M.A., *Guides* and which contained the date the report was amended.

In an October 5, 2009 report, Dr. Weiss reiterated that appellant reached maximum medical improvement on May 14, 2008. He applied the sixth edition of the A.M.A., *Guides* to the May 14, 2008 evaluation findings and rated five percent right arm impairment. Under Table 15-5, page 403 Dr. Weiss assigned a class 1 or 3 percent impairment for the right shoulder acromioclavicular (AC) arthropathy with residual loss. Based on a *QuickDASH* score of 34 percent, he assigned a grade 1 modifier for Functional History (GMFH) under Table 15-7, page 406. Based on his observed and palpatory findings, Dr. Weiss assigned a grade 2 modifier for Physical Examination (GMPE) adjustment under Table 15-8, page 408. Based on magnetic imaging resonance (MRI) scan studies, he assigned a grade 2 modifier for Clinical Studies (GMCS) adjustment under Table 15-9, page 410. Dr. Weiss utilized the Net Adjustment

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<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

Formula of GMFH – Diagnosed Condition (CDX) + GMPE - CDX + GMCS - CDX or (1-1) + (2-1) + (2-1) to find a net adjustment of two or five percent total right upper extremity impairment.

In a March 26, 2010 letter, OWCP advised appellant's attorney that any schedule awards that were not adjudicated prior to May 1, 2009, the effective date of the sixth edition of the A.M.A., *Guides*, were processed based on the sixth edition of the A.M.A., *Guides*.

On March 29, 2010 OWCP medical adviser agreed that appellant reached maximum medical improvement on May 14, 2008. He applied Dr. Weiss's findings contained in the October 5, 2009 report to the applicable tables in the sixth edition of the A.M.A., *Guides* and agreed appellant had five percent right upper extremity impairment.

By decision dated April 12, 2010, OWCP granted appellant a schedule award for five percent permanent impairment of the right upper extremity. The award ran from May 14 to August 31, 2008 for a total of 15.6 weeks of compensation.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</sup> provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>4</sup> Schedule award decisions issued between February 1, 2001 and April 30, 2009 utilize the fifth edition of the A.M.A., *Guides*.<sup>5</sup> Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*,<sup>6</sup> published in 2008, as the appropriate edition for all awards issued after that date.<sup>7</sup>

For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.<sup>8</sup> The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>6</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

<sup>8</sup> *See supra* note 6.

International Classification of Functioning, Disability and Health (ICF).<sup>9</sup> Under the sixth edition, the evaluator identifies the impairment class for CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>10</sup> The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX.

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.<sup>11</sup>

### ANALYSIS

The Board finds that OWCP properly applied the sixth edition of the A.M.A., *Guides* to determine the extent of appellant's impairment. Effective May 1, 2009 OWCP applied the sixth edition of the A.M.A., *Guides* to calculate awards. On appeal and before OWCP, appellant's attorney asserts that the fifth edition of the A.M.A., *Guides* should have been applied as the schedule award request was submitted prior to OWCP's change to the sixth edition of the A.M.A., *Guides*. In *Harry D. Butler*,<sup>12</sup> the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.<sup>13</sup> On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.<sup>14</sup> The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

The sixth edition of the A.M.A., *Guides* provides that upper extremity impairments be classified by diagnosis and then adjusted by grade modifiers according to the above-noted formula. Dr. Weiss determined that appellant was a class 1 for right shoulder AC arthropathy with residual loss under Table 15-5, page 403, which was three percent. He properly applied the grade modifiers of 1 for GMFH under Table 15-7, page 406, 2 for GMPE under Table 15-8, page 408 and 2 for GMCS under Table 15-9, page 410. Dr. Weiss also properly applied the applicable formula to determine that appellant had a net adjustment of two.<sup>15</sup> He properly calculated

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<sup>9</sup> A.M.A., *Guides* (6<sup>th</sup> ed., 2008), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

<sup>10</sup> A.M.A., *Guides* 494-531 (6<sup>th</sup> ed. 2008).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>12</sup> 43 ECAB 859 (1992).

<sup>13</sup> *Id.* at 866.

<sup>14</sup> FECA Bulletin No. 09-03 (issued March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

<sup>15</sup> GMFH - CDX + GMPE - CDX + GMCS - CDX or (1-1) + (2-1) + (2-1) = 2 net modifier.

appellant's impairment for the right shoulder AC arthropathy with residual loss by using the net adjustment of two to shift the default grade C impairment of three percent to grade E which provides impairment of five percent. OWCP medical adviser concurred in this determination.

The record does not contain any medical evidence that establishes greater impairment in accordance with the sixth edition of the A.M.A., *Guides*. Thus, appellant has not established more than five percent right upper extremity impairment.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that appellant has not established that he has more than five percent right upper extremity impairment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board