



bilateral knee contusions, lumbar strain/sprain and derangement of the left knee. Appellant stopped working on June 29, 1996. He underwent lumbar surgery on May 22 and June 30, 2000.

With respect to a schedule award for permanent impairment, appellant's attending osteopath, Dr. John Jackson, referred appellant to a rehabilitation clinic for examination and report on his current condition. The record contains a report dated August 29, 2002, which includes results on shoulder range of motion and strength test results. The report also reported impairment ratings for loss of range of motion and peripheral nerve disorder for the medial and lateral pectorals.

In a report dated October 2, 2002, Dr. Jackson provided a history and stated that, for the right arm, appellant had 95 degrees of shoulder flexion for a 5 percent impairment, and 54 degrees of extension resulting in no impairment. Dr. Jackson reported abduction of 95 degrees for a 4 percent impairment, adduction of 0 degrees for a 2 percent permanent impairment, internal rotation of 45 degrees resulting in a 2 percent impairment and external rotation of 85 degrees resulting in no impairment. He concluded that appellant had a 13 percent arm impairment due to loss of range of motion. According to Dr. Jackson, "further impairment would be based on nerve impairment for the peripheral nerves of the shoulder consisting of the medial and lateral pectoral nerves. These would yield a Grade 2 impairment, which is 5 percent upper extremity impairment." Dr. Jackson combined the 13 percent and 5 percent impairments for a 17 percent right arm impairment. He also found a four percent impairment to the lower extremity.

By report dated June 11, 2003, an Office medical adviser indicated that appellant had a 13 percent right arm impairment based on loss of range of motion. The medical adviser indicated that according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) "Sec[ti]on 16.8a, p. 508 states decreased strength cannot be rated in the presence of decreased motion. It is for this reason, decreased strength will not be used in this determination." The medical adviser found that appellant had a 13 percent right arm impairment, with a 2 percent impairment to each leg.

In a decision dated January 16, 2004, the Office issued a schedule award for a 13 percent impairment to the right arm, 2 percent for the left and right legs. The period of the award was 52 weeks of compensation from October 2, 2002. Appellant requested a review of the written record and by decision dated June 14, 2004 an Office hearing representative affirmed the schedule award with respect to the 13 percent permanent impairment to the right arm. The hearing representative remanded the case for further development with respect to the lower extremity impairments.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member

or function.<sup>1</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>2</sup>

### ANALYSIS

In the present case, the Office determined that appellant had a 13 percent permanent impairment to his right arm based on loss of range of motion. The impairment due to loss of shoulder range of motion is determined under Figures 16-40 through 16-46 of the A.M.A., *Guides*. Shoulder flexion and extension impairments are found in Figure 16-40; Dr. Jackson reported 95 degrees of flexion and found a 5 percent impairment.<sup>3</sup> With respect to adduction and abduction, Figure 16-43 provides that 95 degrees of abduction is a 4 percent arm impairment, and 0 degrees of adduction results in a 2 percent impairment.<sup>4</sup> Dr. Jackson reported 45 degrees of internal rotation, which results in a 2 percent arm impairment under Figure 16-46.<sup>5</sup> No impairment is awarded for 85 degrees of external rotation.

The record therefore supports the finding of Dr. Jackson and the Office medical adviser that appellant had a 13 percent arm impairment due to loss of shoulder range of motion. The individual impairments of 5, 4, 2 and 2 are added to properly determine the impairment.

Dr. Jackson also opined that appellant had an additional impairment due to a peripheral nerve disorder, specifically of the medial and lateral pectorals. Impairments due to peripheral nerve disorders are determined according to section 16.5 of the A.M.A., *Guides*. The Office medical adviser cited to section 16.8 for the proposition that decreased strength impairments cannot be rated in the presence of decreased motion. Section 16.8, however, is applicable to impairments that are based on grip and pinch strength, or manual muscle testing, as provided in Tables 16-31 to 16-35.<sup>6</sup> The A.M.A., *Guides* state that these tables should only be used in rare cases when the impairing factor has not been considered adequately by other methods; decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or amputations that prevent effective application of maximal force in the evaluated region. Dr. Jackson did not use Tables 16-31 to 16-35 in this case. He cited the tables for peripheral

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>3</sup> A.M.A., *Guides*, 476, Figure 16-40. One hundred degrees of flexion results in a 5 percent impairment, 90 degrees is a 6 percent impairment. There is no impairment for 50 degrees or more of extension.

<sup>4</sup> *Id.* at 477, Figure 16-43.

<sup>5</sup> *Id.* at 479, Figure 16-46.

<sup>6</sup> Section 16.5 states that loss of strength relating to conditions not resulting from peripheral nerve disorders is discussed in section 16.8. *Id.* at 484.

nerve disorders under section 16.5, and Table 17-2 specifically indicates that peripheral nerve injury and range of motion impairment methods may be combined.<sup>7</sup>

Since Dr. Jackson did not provide an impairment rating based on strength evaluation under section 16.8, but rather identified a peripheral nerve injury, the rationale provided by the Office for limiting appellant's arm impairment to 13 percent is incorrect. The case will be remanded to the Office for a proper calculation of the right arm impairment. In this regard the Board notes that Dr. Jackson opined that appellant had a five percent impairment and identified the pectorals nerve. Table 16-15 indicates that the maximum impairment for motor deficit is five percent, and yet Dr. Jackson graded the impairment as a Grade 2 impairment under Table 16-11, which is 51 to 75 percent of the maximum. It is not clear how Dr. Jackson calculated the degree of impairment due to a peripheral nerve injury, and the Office should secure appropriate medical evidence that properly evaluates the impairment under section 16.5.<sup>8</sup>

### **CONCLUSION**

The Board finds that the case requires further development of the medical evidence. A physician is not precluded from combining impairments due to loss of arm range of motion and peripheral nerve injury, but the case requires further development as to the proper application of section 16.5 of the A.M.A., *Guides* in this case.

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<sup>7</sup> *Id.* at 526, Table 17-2.

<sup>8</sup> The Board notes that the A.M.A., *Guides* state that weakness may be due to many causes, and Table 16-11 is not to be used for rating weakness that is not due to a diagnosed injury of a specific nerve.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 14 and January 16, 2004 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 26, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member