

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**T.S., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, TINKER  
AIR FORCE BASE, OK, Employer**

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**Docket No. 07-584  
Issued: June 22, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 27, 2006 appellant filed a timely appeal from the January 13 and November 8, 2006 decisions of the Office of Workers' Compensation Programs granting a schedule award. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award appeal.

**ISSUE**

The issue is whether appellant has established that he has more than six percent impairment to his right upper extremity, for which he received a schedule award.

**FACTUAL HISTORY**

On August 16, 2001 appellant, then a 61-year-old accountant, sustained injury to his left knee and hands in a slip and fall.<sup>1</sup> The claim was accepted for a right shoulder strain/sprain and

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<sup>1</sup> The record indicates that the employing establishment was aware of the fall and appellant received conservative medical treatment.

she received appropriate compensation benefits. On February 2, 2002 appellant stopped working for the employing establishment and sought alternative employment. On October 31, 2003 the Office accepted a recurrence of disability occurring on June 19, 2002 following a second opinion examination with Dr. Don Leon Fong, a Board-certified orthopedic surgeon. In his October 17, 2003 report, Dr. Fong indicated that appellant had a normal examination, with full range of motion and normal motor strength with no residual impairment from the shoulder injury.

On April 26, 2004 appellant filed a claim for a schedule award. In a December 12, 2003 report, Dr. Laurence H. Altshuler, a Board-certified internist, noted the history of injury and his review of appellant's medical records. His examination revealed a significant decrease in motor strength, as well as limited range of shoulder motion. Dr. Altshuler opined, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), that appellant had 25 percent impairment of the whole person due to his shoulder injury. He advised the determination of permanent impairment due to the shoulder injury was based on Figures 15-3, 40-43 and 46, Tables 15-15, 15-16, 16-14 and 16-18 of the A.M.A., *Guides*.

In a September 22, 2004 report, an Office medical adviser reviewed the medical record. He was unable to provide a probative impairment rating because of the discrepancy between the range of motion findings between Dr. Altshuler and Dr. Fong. A second opinion examination was recommended.

Appellant was referred, together with his case file, a statement of accepted facts and a list of questions, to Dr. Dennis Ice, a Board-certified physiatrist. In a December 1, 2004 report, Dr. Ice stated that he based his impairment rating on loss of range of motion as he found no sensory or motor impairment to the right upper extremity or any specific diagnosis or specific disorders. He opined that appellant had seven percent upper extremity impairment. Under Figure 16-40, page 476 of the A.M.A., *Guides*, Dr. Ice found flexion of 135 degrees equaled three percent impairment and the unaffected side flexed to 150 degrees. Dr. Ice subtracted the difference to find one percent impairment. Under Figure 16-40, page 476 of the A.M.A., *Guides*, an extension of 70 degrees equaled zero percent impairment. Under Figure 16-43, page 477 of the A.M.A., *Guides*, Dr. Ice found an abduction of 110 degrees equaled three percent impairment and the unaffected side abducted to 160 degrees or one percent impairment. He subtracted the difference to find two percent impairment. Under Figure 16-43, page 477 of the A.M.A., *Guides*, Dr. Ice found an adduction of 85 degrees equaled zero percent impairment. Under Figure 16-46, page 479, of the A.M.A., *Guides* external rotation of 90 degrees equaled a zero percent impairment and internal rotation of 30 degrees equaled four percent impairment.<sup>2</sup>

In a March 15, 2006 report, the Office medical adviser noted that there was a discrepancy between the degree of internal rotation noted in Dr. Ice's examination findings of 80 degrees and the 30 degrees used to base an impairment rating. He requested that the Office obtain clarification from Dr. Ice as to the internal rotation measurement. In an April 8, 2005 response, Dr. Ice stated that he found 80 degrees of internal rotation for the right shoulder but had

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<sup>2</sup> On examination, Dr. Ice advised that appellant had an internal rotation of 80 degrees.

erroneously listed it as 30 degrees. He noted that internal rotation would yield zero percent impairment. Dr. Ice recommended a three percent total impairment for the right upper extremity.

On May 26, 2005 the Office medical adviser reviewed the file. Based on his December 1, 2004 and April 8, 2005 reports, Dr. Ice found that appellant reached maximum medical improvement on December 1, 2004. He related impairment as six percent right of the upper extremity impairment. The Office medical adviser stated that the difference was based on the fact that Dr. Ice had subtracted the left side shoulder range of motion from the right side.

By decision dated June 28, 2005, the Office granted a schedule award for a six percent permanent impairment of the right upper extremity. Appellant received 18.72 weeks of compensation for the period December 1, 2004 through April 11, 2005.

On July 5, 2005 appellant disagreed with the June 28, 2005 decision and requested an oral hearing. A telephonic hearing was held on November 21, 2005. Appellant submitted statements regarding how his right shoulder has affected his ability to perform his job and his life style. No new medical evidence was provided.

By decision dated January 13, 2006, an Office hearing representative affirmed the June 28, 2005 schedule award.

In an October 21, 2006 letter, appellant requested reconsideration. In a February 20, 2006 letter, he addressed the medical care of his right shoulder and how his injury prevented him from effectively doing his job. In an October 21, 2006 statement, appellant advised that Dr. Jacob George, a Board-certified orthopedic surgeon, performed testing after two years of rest and recovery from his injury. He submitted copies of medical reports, including the July 15 and September 9, 2004 medical reports from Dr. George, chart notes and an April 19, 2004 magnetic resonance imaging (MRI) scan report, all previously of record.

By decision dated November 8, 2006, the Office denied modification of its January 13, 2006 decision.

On appeal, appellant contends that his work-related shoulder injury prevented him from performing necessary job tasks.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the

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<sup>3</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>4</sup> 20 C.F.R. § 10.404.

Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>5</sup>

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.<sup>6</sup> However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.<sup>7</sup>

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.<sup>8</sup>

### ANALYSIS

Appellant received a schedule award for six percent impairment to the right upper extremity based on the opinion of the Office medical adviser. An Office hearing representative found that a greater impairment was not warranted on the basis of the medical evidence.

In a December 12, 2003 report, Dr. Altshuler advised that under the A.M.A., *Guides* appellant had a 25 percent impairment of the whole person due to his shoulder injury. While he cited to various figures and tables within the A.M.A., *Guides*, Dr. Altshuler failed to address how he applied the tables to arrive at his impairment rating or indicate how his examination findings conformed with the cited figures and tables.<sup>9</sup> Without this information, the Board finds that Dr. Altshuler's report is of diminished probative value. Moreover, Dr. Altshuler expressed his impairment rating in terms of whole man impairment rather than providing an estimate for the right upper extremity.

As Dr. Altshuler's report was not probative for a determination on the extent of appellant's permanent impairment, the Office properly referred appellant for a second opinion examination with Dr. Ice. The Office medical adviser reviewed the reports of Dr. Ice and determined that appellant had a six percent impairment to the right upper extremity. Under Figure 16-40, page 476 of the A.M.A., *Guides*, 135 degrees flexion equals three percent impairment and 70 degrees extension equals zero percent impairment. Under Figure 16-43, page

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<sup>5</sup> See *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>6</sup> See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

<sup>7</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000); see also *Paul A. Toms*, 28 ECAB 403 (1987).

<sup>8</sup> See *Thomas J. Fragale*, 55 ECAB 619 (2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

<sup>9</sup> See *James R. Hill*, 57 ECAB \_\_\_\_ (Docket No. 05-1899, issued May 12, 2006) (schedule awards are to be based on the A.M.A., *Guides*; an estimate of permanent impairment is irrelevant and of diminished probative value where it is not based on the A.M.A., *Guides*).

477 of the A.M.A., *Guides*, 110 degrees of abduction equals three percent impairment and 85 degrees adduction equals zero percent impairment. Under Figure 16-46, page 479 of the A.M.A., *Guides*, 80 degrees internal rotation and 90 degrees external rotation equal zero percent impairment. The Office medical adviser properly did not concur with Dr. Ice's impairment rating which offset the right arm loss of range of motion impairments with these involving the left side.<sup>10</sup> The medical evidence of record therefore establishes that appellant has six percent impairment to the right upper extremity due to loss of motion.

Appellant's arguments pertaining to how his shoulder injury prevents him from effectively doing his job at the employing establishment has no basis in establishing a schedule award.<sup>11</sup> He has contended that he has more than six percent impairment to his right upper extremity. However, the issue in this claim is medical in nature and must be resolved by the submission of probative medical evidence.<sup>12</sup> Appellant did not submit any medical evidence addressing the extent of his permanent impairment. The reports of Dr. George noted appellant's status and examination but the physician did not provide any impairment rating pursuant to the A.M.A., *Guides*, nor provide findings that correlated to the A.M.A., *Guides*.

The Board finds that appellant has no more than six percent impairment to the right arm based on loss of motion.

### **CONCLUSION**

The Board finds that appellant has no more than a six percent impairment to the right upper extremity, for which he received a schedule award.

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<sup>10</sup> See *John Constantin*, 39 ECAB 1090 (1988) (in calculating a schedule award, all claimants must be measured against the range of motion listed in the A.M.A., *Guides* so that the Office can reach consistent results in schedule award determination).

<sup>11</sup> See *Kimberly M. Held*, 56 ECAB \_\_\_\_ (Docket No. 05-1050, issued August 16, 2005) (factors such as employability or limitations on daily activities have no bearing on the calculation of a schedule award).

<sup>12</sup> See *Jaja K. Asaramo*, 55 ECAB 200, 206 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 8, 2006 is affirmed.

Issued: June 22, 2007  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board