



minimal discomfort and released him from treatment. Dr. Jany indicated that he did not do impairment ratings.

The Office referred appellant to Dr. Stanley L. James, a Board-certified orthopedic surgeon, for a second opinion examination to evaluate appellant's impairment. In a medical report dated February 28, 2006, Dr. James listed his impression as "status post left rotator cuff tear with subacromial impingement syndrome, post subacromial decompression." He further stated:

"It appears this gentleman's condition is medically stationary. He does have occasional pain and takes occasional ibuprofen, but he is working without restrictions and carrying out his normal assignment.

"The [American Medical Association, *Guides to the Evaluation of Permanent Impairment*], fifth edition, was consulted in regard to any permanent partial impairment. There is no ratable impairment based upon the fifth edition.

"Shoulder flexion was less than normal, but it was symmetrical and therefore I do not feel that the left shoulder flexion of 155 degrees is ratable.

"Although there was 20 degrees less external rotation of the left shoulder than the right, there was still 70 degrees of external rotation, which does not rate any permanent impairment.

"Likewise, there was 10 degrees less extension of the left shoulder at 60 degrees, but this is not ratable.

"Thus, after consulting the fifth edition of the [A.M.A., *Guides*], there is no ratable permanent impairment in regard to the left shoulder condition."

On March 16, 2006 the Office asked the Office medical adviser to review Dr. James' report and to provide calculations pursuant to the A.M.A., *Guides* as to appellant's impairment. In a response dated July 25, 2006, the Office medical adviser quoted extensively from Dr. James' report and also quoted from Dr. Jany's May 5, 2005 operative report. He concluded that Dr. James found no ratable left upper extremity impairment. The Office medical adviser also found that appellant reached maximum medical improvement on February 28, 2006.

By decision dated July 31, 2006, the Office found that appellant was not entitled to a schedule award as he had not established that he sustained a permanent impairment of his left upper extremity due to an accepted work injury.

## LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.404 of the implementing federal regulation,<sup>2</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates 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 the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>3</sup> As of February 1, 2002, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.<sup>4</sup>

## ANALYSIS

Appellant's surgeon, Dr. Jany, did not make an impairment rating. Therefore, the Office properly referred appellant to Dr. James for an impairment rating. Dr. James stated that he applied the A.M.A., *Guides* and concluded that there was no ratable permanent impairment in regard to appellant's left shoulder. He noted that, although there was 20 degrees less external rotation of the left shoulder than the right, there was still 70 degrees of external rotation, which does not rate any impairment. Dr. James' conclusion is in accordance with the A.M.A., *Guides*.<sup>5</sup> He also properly applied the A.M.A., *Guides*, when he concluded that, although there was 10 degrees less extension of the left shoulder at 60 degrees, this was not ratable.<sup>6</sup> However, Dr. James found left shoulder flexion of 155 degrees which represents an impairment of one or two percent under the A.M.A., *Guides*.<sup>7</sup> He noted that this shoulder flexion, although less than normal was symmetrical. The Office medical adviser agreed with the assessment of Dr. James. The Board will remand the case for further consideration of the medical evidence as Dr. James noted a ratable impairment based on loss of motion of the left shoulder.<sup>8</sup>

## CONCLUSION

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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

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

<sup>5</sup> See A.M.A., *Guides* 479, Figure 16-46.

<sup>6</sup> See *Id.* at 476, Figure 16-40.

<sup>7</sup> *Id.*

<sup>8</sup> Dr. James noted that appellant experienced pain in the left shoulder. The Board has noted that pain may constitute the basis for payment of a schedule award. See *Tania R. Keka*, 55 ECAB 354 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 31, 2006 is set aside and the case is remanded for further action in accordance with this decision.

Issued: March 20, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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