

duty.¹ He did not stop work.² On November 4, 2005 the Office accepted his claim for left shoulder subluxation. The Office authorized a left shoulder arthroscopy with arthroscopic labral repair which was performed on November 10, 2005. Appellant received appropriate compensation benefits.

On August 3, 2006 appellant requested a schedule award.

By letter dated September 7, 2006, the Office advised appellant to obtain an assessment of permanent impairment from a physician based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001). No response was received.

By decision dated October 19, 2006, the Office denied appellant's claim for a schedule award.

By letter dated November 26, 2006, appellant requested reconsideration and enclosed additional evidence.

In an October 5, 2006 report, Dr. Emmanuele E. Jacob, a Board-certified physiatrist and treating physician, noted appellant's history of injury which included a November 10, 2005 procedure for an arthroscopy of the left shoulder with arthroscopic labral repair and arthroscopic capsulorrhaphy. Appellant's current complaints included pain in the left shoulder with limited motion and weakness. Dr. Jacob utilized the A.M.A., *Guides* and noted that appellant had muscle weakness of his left shoulder. He determined that appellant had a loss of power deficit and referred to Tables 16-11 and 16-32.³ Dr. Jacob indicated that appellant had left shoulder weakness equal to a Grade 4/5 which was equivalent to a "20 percent motor deficit and 35 percent maximum." For "motor deficient impairment," he opined that appellant had a 20 percent impairment which was equal to a "motor deficit severity times 35 percent" for a maximum upper extremity impairment equal to a "7 percent impairment of the upper extremity." For loss of motion, Dr. Jacob referred to Figure 16-40⁴ and determined that appellant had left shoulder flexion of 150 degrees or a two percent impairment and extension of 35 degrees which was equal to one percent impairment. He also referred to Figure 16-43⁵ and determined that appellant had left shoulder abduction of 140 degrees equal to a two percent impairment and adduction of 40 degrees which was equal to zero percent impairment. Dr. Jacob referred to Figure 16-46⁶ and determined that appellant had left shoulder external rotation of 80 degrees equal to zero percent

¹ The record reflects that appellant was participating in a structured physical fitness program authorized by the employing establishment.

² The record reflects that appellant has a previous claim for a February 23, 2004 injury to his left shoulder under File No. A03-2026174. That claim was accepted for "closed dislocation of the left shoulder."

³ A.M.A., *Guides* 484, 509.

⁴ *Id.* at 476.

⁵ *Id.* at 477.

⁶ *Id.* at 479.

impairment of the left shoulder and left shoulder internal rotation of 70 degrees equal to a one percent impairment. He referred to Figure 16-34⁷ for left elbow flexion of 140 degrees which was equal to zero percent impairment and extension of 0 degrees for zero percent impairment. Dr. Jacob referred to Figure 16-37⁸ and determined that forearm supination of 75 degrees was equal to zero percent impairment of the upper extremity and forearm pronation of 70 degrees was equal to one percent impairment of the upper extremity. He referred to Figure 16-28⁹ and determined that left wrist flexion of 60 degrees was equal to zero percent impairment and extension of 60 degrees was equal to zero percent impairment. Dr. Jacob also referred to Figure 16-31¹⁰ and determined that left wrist radial deviation of 30 degrees was equal to zero percent impairment and ulnar deviation of 30 degrees was equal to zero percent impairment. He also indicated that appellant was entitled to an additional impairment for upper limb pain according to section 18.3D.¹¹ Dr. Jacob added the percentages and determined that appellant had a total 18 percent impairment of the left upper extremity.

In a December 19, 2006 report, the Office medical adviser noted appellant's history and reviewed Dr. Jacobs October 5, 2006 report. He noted that the physician did not list any diagnoses and impairments or abnormalities of the elbow but listed them in his examination and in his recommendations for a schedule award. The Office medical adviser stated: "[that] this type injury and shoulder surgery would not be expected to demonstrate any limitation of motion of the elbow or wrist." He noted that, if there were objections to elbow and wrist impairment not being included, he would recommend a second opinion evaluation because the clinical picture should not be expected to have any abnormalities of the elbow or wrist. The Office medical adviser referred to Figure 16-40¹² for range of motion and noted that left shoulder flexion was equal to 150 degrees, which was equivalent to two percent impairment and extension of 35 degrees was equal to one percent impairment. He added the measurements and advised that the impairment was three percent. The Office medical adviser referred to Figure 16-43¹³ and determined that appellant had 140 degrees of abduction for two percent impairment and 40 degrees adduction was equivalent to zero percent impairment. He opined that appellant had a two percent impairment based loss of abduction. The Office medical adviser referred to Figure 16-46¹⁴ and noted that for external rotation of 80 degrees appellant was entitled to a zero percent impairment and internal rotation of 70 degrees was equal to one percent impairment. He recommended that the measurements for forearm pronation loss of the elbow not be accepted. The Office medical adviser concurred with Dr. Jacob regarding three percent impairment for

⁷ *Id.* at 472.

⁸ *Id.* at 474.

⁹ *Id.* at 467.

¹⁰ *Id.* at 469.

¹¹ *Id.* at 573.

¹² *Id.* at 476.

¹³ *Id.* at 477.

¹⁴ *Id.* at 479.

ongoing pain based upon Figure 18.1¹⁵ Regarding loss of strength, he explained that it was a subjective measurement and referred to section 16.8¹⁶ The Office medical adviser noted that the use of grip strength as an impairment factor was not encouraged because such measurements were functional tests influenced by subjective factors that were difficult to control. He also noted that, the A.M.A., *Guides* were based on anatomic impairment and that otherwise, the impairment ratings based on objective anatomic findings take precedence. The Office medical adviser further noted that strength could only be used in rare cases. He advised that Dr. Jacob did not include any strength measurements other than indicate that muscle weakness was 4/5 for the left shoulder. The Office medical adviser also noted that impairments of the upper extremity due to motor and loss of power deficits could be utilized if they resulted from peripheral nerve disorders, however, he noted that appellant did not have a peripheral nerve disorder.¹⁷ He concluded that appellant had nine percent impairment of the left upper extremity.

On February 6, 2007 the Office granted appellant a schedule award for a nine percent impairment of the left upper extremity. The award covered a period of 28.06 weeks from October 5, 2006 to January 20, 2007.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹⁸ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹⁹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.²⁰ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.²¹

It is well established that, in determining the amount of the schedule award for a member of the body that sustained an employment-related impairment, preexisting impairments are to be included in the evaluation of permanent impairment.²²

¹⁵ *Id.* at 574.

¹⁶ *Id.* at 508.

¹⁷ *Id.* at 484.

¹⁸ 5 U.S.C. §§ 8101-8193.

¹⁹ 5 U.S.C. § 8107.

²⁰ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

²¹ A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

²² *See Eleanor E. Smith*, 53 ECAB 292 (2002); *Lela M. Shaw*, 51 ECAB 372 (2000).

ANALYSIS

Appellant's claim was accepted for left shoulder subluxation and a left shoulder arthroscopy with arthroscopic labral repair. In support of his schedule award claim, appellant provided an October 5, 2006 report, from Dr. Jacob his treating physician, who found that appellant had a total 18 percent impairment to the left upper extremity.²³ However, the Board finds that portions of Dr. Jacob's report are of diminished probative value as his ratings did not comply with the A.M.A., *Guides*. The Board notes that Dr. Jacob properly utilized the A.M.A., *Guides* when finding impairment for lost range of motion of the left shoulder; however, the remainder of his report was insufficient to support a finding of greater impairment, as his conclusions are not supported by the protocols followed by the Office.

Dr. Jacob properly determined that appellant had six percent impairment based on loss of motion to the shoulder. He utilized Figures 16-40, 16-43 and 16-46 of the A.M.A., *Guides*.²⁴ Dr. Jacob referred to Figure 16-40 and provided findings on examination of left shoulder flexion of 150 degrees or a two percent impairment and extension of 35 degrees for one percent impairment.²⁵ He referred to Figure 16-43 for abduction and noted that appellant had 140 degrees of abduction or two percent impairment and adduction of 40 degrees or zero percent impairment.²⁶ Regarding rotation, Dr. Jacob referred to Figure 16-46 and found that appellant had 80 degrees of external rotation or zero percent impairment and 70 degrees of internal rotation for one percent impairment. He added these values which resulted in six percent impairment for loss of motion. The Office medical adviser concurred with Dr. Jacob's findings regarding the loss of motion for the shoulder. The Board finds that this aspect of his impairment rating complies with the A.M.A., *Guides*. Appellant has impairment of six percent to the left upper extremity.

However, the Board finds that the remainder of Dr. Jacob's report is insufficient to support a greater impairment. Dr. Jacob indicated that appellant was entitled to an additional three percent for pain. The Office medical adviser also agreed with Dr. Jacob's finding that appellant was entitled to an additional three percent impairment for pain under Chapter 18 of the A.M.A., *Guides*. However, the Board notes that according to section 18.3(b) of the A.M.A., *Guides*, "examiners should not use this chapter to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*."²⁷ Dr. Jacob explains why appellant's pain could not be adequately rated by other chapters in the A.M.A., *Guides*. Thus, the Board finds that appellant is not entitled to the three percent impairment for pain under Chapter 18.

²³ The Board notes that he added these values instead of combining the values. The A.M.A., *Guides* provide that multiple regional impairments, such as the wrist and the shoulder, should be combined. A.M.A., *Guides*, paragraph 16.1c, page 438.

²⁴ *Id.* at 476, 477, 479.

²⁵ *Id.* at 476.

²⁶ *Id.* at 477.

²⁷ *Id.* at 571, (5th ed. 2001); see *Mark A. Holloway*, 55 ECAB 321 (2004).

The remainder of Dr. Jacob's report is of diminished probative value as he did not explain how his report conformed with the A.M.A., *Guides*. He provided a recommendation for an impairment of seven percent for motor deficit. Although Dr. Jacob referred to Tables 16-11 and 16-32 of the A.M.A., *Guides*,²⁸ he did not adequately explain how his rating for loss of strength was made in light of the A.M.A., *Guides* at 508, section 16.8a. It is noted that decreased strength can not be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximum force.²⁹ Furthermore, the Office medical adviser explained that loss of strength should be graded separately, only if it is based on an unrelated cause or mechanism, "otherwise, the impairment ratings based on objective anatomic findings take precedence."³⁰ He noted that while Dr. Jacob opined that appellant had muscle weakness of the left shoulder which equated to a 4/5, the treating physician did not provide any strength measurements. The Office medical adviser also noted that appellant did not have a "peripheral nerve disorder" and it would be inappropriate to use Table 16-11.³¹ Thus, the impairment of seven percent would not be appropriate.

Additionally, the Office medical adviser questioned Dr. Jacob's finding of one percent for forearm (elbow) pronation loss to the upper extremity, noting that appellant's condition was accepted for a left shoulder subluxation and left shoulder arthroscopy, which would not affect his wrists or elbow. Dr. Jacobs did not adequately explain why he included these calculations in light of the accepted shoulder condition. It is well established that, in determining the amount of the schedule award for a member of the body that sustained an employment-related impairment, preexisting impairments are to be included in the evaluation of permanent impairment.³² However, there is no specific indication of any preexisting impairment of the arm. Dr. Jacobs did not provide any additional explanation to support his other findings. Accordingly, the Board finds that the evidence supports that appellant has no greater impairment than a six percent impairment of the left upper extremity.

The Board modifies the findings provided by the Office as noted above and finds that appellant was entitled to an impairment of no more than six percent to the left arm. Appellant has not submitted any other medical evidence conforming with the A.M.A., *Guides* establishing that appellant has a greater schedule award.³³

²⁸ A.M.A., *Guides* 484, 509.

²⁹ *Id.* at 508, section 16.8a.

³⁰ *Id.* at 508.

³¹ *Id.* at 484.

³² *See supra* note 22.

³³ The Board notes that appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he has more than a nine percent impairment of the left arm for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 6, 2007 is affirmed, as modified.

Issued: December 10, 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