

On January 9, 2006 appellant, then a 54-year-old heavy equipment operator, sustained injury to his right shoulder in the course of his federal employment. By letter dated February 14, 2006, the Office accepted his claim for right shoulder strain, right shoulder contusion and right

rotator cuff tear. On March 30, 2006 appellant underwent a right shoulder arthroscopic rotator cuff repair and subacromial decompression.

On January 8, 2007 appellant's physical therapist found that he had an eight percent impairment to the right upper extremity. The physical therapist indicated that he utilized the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. On January 15, 2007 appellant's physical therapist performed an upper extremity functional capacity evaluation.¹ In a medical note dated January 29, 2007, Dr. Jeffrey R. Dugas, a Board-certified orthopedic surgeon, stated that he believed appellant had reached maximum medical improvement with regard to the recovery of his right shoulder. He agreed with the physical therapist's assessment that appellant had an eight percent right upper extremity permanent impairment based on loss of range of motion.

On July 27, 2007 appellant filed a claim for a schedule award.

In a note dated January 8, 2007, received on November 13, 2007, the same physical therapist stated that, under the criteria of the A.M.A., *Guides* (5th ed.), appellant has a 16 percent impairment of the right upper extremity.

By memorandum dated November 16, 2007, the Office asked the medical adviser to review the medical reports and determine the permanent functional loss of use of the right arm and the date maximum medical improvement was obtained. On November 16, 2007 the Office medical adviser indicated that appellant had arthroscopic rotator cuff repair on his right shoulder on March 30, 2006 with loss of motion of the right shoulder. Based on the A.M.A., *Guides* (5th ed.), appellant had an eight percent impairment to the right upper extremity. He did not address the January 8, 2007 note from the physical therapist.

By decision dated November 20, 2007, the Office issued a schedule award for an eight percent impairment of appellant's right arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² provides for compensation to employees sustaining permanent loss, or loss of use, of specified members of the body. The Act, 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 the Office. 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* (5th ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

¹ The physical therapist advised that appellant had right shoulder flexion of 0 to 150, extension of 0 to 50, abduction 0 to 110, adduction 0 to 30, internal rotation 0 to 55 and external rotation 0 to 70.

² 5 U.S.C. §§ 8101-8193.

³ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

ANALYSIS

The Board finds that appellant has an eight percent impairment to the right arm. Appellant's physical therapist, Mr. Weiland, obtained range of motion measurements and determined that appellant had an eight percent impairment under the A.M.A., *Guides*. Dr. Dugas agreed with this assessment and adopted the findings. Although the physical therapist utilized the 4th edition of the A.M.A., *Guides*, making his rating, the physical findings can be applied to the 5th edition of the A.M.A., *Guides*, as there are no differences between the editions in the impairment assigned. The Board notes that shoulder flexion of 150 degrees equals a two percent impairment under the A.M.A., *Guides*.⁴ Shoulder abduction to 110 degrees equals a three percent impairment pursuant to the A.M.A., *Guides*.⁵ Shoulder adduction to 30 degrees equals a one percent permanent impairment of the right upper extremity.⁶ Shoulder internal rotation to 55 degrees is two percent permanent impairment under the A.M.A., *Guides*.⁷ Shoulder external rotation to 70 degrees is zero percent permanent impairment.⁸ This totals impairment of right upper extremity due to loss of motion of eight percent.

Appellant's attorney contends that the record establishes greater impairment, citing a January 8, 2007 physical therapy report received by the Office on November 13, 2007. However, there is no evidence that this note was over reviewed by and adopted by a physician. The reports of physical therapists have no probative value on medical questions because a physical therapist is not a physician as defined under 5 U.S.C. § 8101(2).⁹ Therefore, this report does not constitute relevant medical opinion evidence. There is no probative medical evidence to establish that appellant has greater than eight percent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has not established more than an eight percent impairment to his right arm.

⁴ Compare A.M.A., *Guides* (4th ed.) 43, Figure 38 with A.M.A., *Guides* (5th ed.) 476, Figure 16-40.

⁵ Compare A.M.A., *Guides* (4th ed.) 44, Figure 41 with A.M.A., *Guides* (5th ed.) 477, Figure 16-43.

⁶ *Id.*

⁷ Compare A.M.A., *Guides* (4th ed.) 45, Figure 44 with A.M.A., *Guides* (5th ed.) 479, Figure 16-46.

⁸ *Id.*

⁹ *James Robinson, Jr.*, 53 ECAB 417 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 20, 2007 is affirmed.

Issued: November 13, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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