

FACTUAL HISTORY

The Office accepted that, on March 29, 2002, appellant, then a 41-year-old letter carrier, was injured in the performance of duty. The Office accepted the conditions of cervical disc herniation at C5-6 and C6-7 and right shoulder impingement syndrome as being work related. The Office further authorized a cervical fusion and right shoulder arthroscopy, which appellant underwent on November 4, 2002 and June 9, 2003 respectively. Appellant returned to a modified city carrier position on July 24, 2004.² He stopped work on September 17, 2004 after retiring on disability.

On October 12, 2003 appellant claimed a schedule award. In support of his claim, he submitted an October 1, 2003 report from Dr. Peter Low, a Board-certified occupational physician, which noted that appellant had constant, slight pain in his neck, which became slight to moderate with heavy lifting, repetitive lifting and reaching above the shoulder level and minimal to slight pain in his right shoulder brought on by repetitive reaching and lifting above the shoulder level with his right upper extremity. Dr. Low opined that appellant had reached maximum medical improvement, noted his examination findings and listed various measurements for shoulder range of motion and testing.

Based on Dr. Low's report, on February 3, 2004, an Office medical adviser found that appellant had a five percent permanent impairment of the right upper extremity according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). A four percent impairment was due to loss of range of motion and a one percent impairment was due to sensory deficit or pain.

On April 20, 2004 the Office issued a schedule award for a five percent permanent impairment of the right upper extremity. The Office determined that appellant was entitled to 15.6 weeks of compensation for the period October 1, 2003 to January 18, 2004.

On October 4, 2004 appellant claimed an additional schedule award. In an August 27, 2004 report, Dr. Low stated that appellant was slightly worse than he was at the time of his final report of October 1, 2003. He opined that appellant had reached maximum medical improvement and provided his examination results. Dr. Low noted that appellant had a forward flexion of 30 degrees, an extension of 5 degrees, right lateral bending of 15 degrees and right rotation of 45 degrees. He noted that the upper extremities had no tenderness or swelling and there was full range of motion of all joints. The sensory examination demonstrated decreased sensation and loss of two-point discrimination in the anterior and lateral right shoulder in the C5 dermatomal distribution. Testing for the right shoulder range of motion revealed: abduction of 165 degrees; adduction of 50 degrees; forward flexion of 170 degrees; internal rotation of 55 degrees; external rotation of 75 degrees; and extension of 30 degrees. Right-sided muscle strength was noted as being slightly weaker for the abductors, adductors, forward flexors, internal rotators, external rotators and extensor muscles.

² On September 27, 2004 the Office found that appellant's position as a modified city carrier fairly and reasonably represented his wage-earning capacity. However, as previously noted, the Board will not address this issue. See *supra* note 1.

In a December 15, 2004 report, an Office medical adviser reviewed the medical record and concurred that appellant had reached maximum medical improvement. Based on Dr. Low's August 27, 2004 report, the Office medical adviser applied the fifth edition of the A.M.A., *Guides* and found that appellant had a total impairment of 14 percent for the right upper extremity. Accordingly, the Office medical adviser found that appellant was entitled to an additional nine percent impairment from the previous determination. A five percent impairment was due to loss of range of motion, a seven percent impairment was due to loss of strength and a two percent impairment was due to sensory deficit or pain.

By decision dated December 30, 2004, the Office modified its previous award to reflect an entitlement to a 14 percent permanent right upper extremity impairment. Thus, the Office awarded appellant an additional nine percent right upper extremity impairment from its previous determination. The Office determined that appellant was entitled to 28.08 weeks of compensation commencing August 27, 2004.

On appeal, appellant contends that his impairment is higher than that reflected in his schedule award.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.404 of the implementing federal regulation,⁴ 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*⁵ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

ANALYSIS

On appeal, appellant alleged that there was a discrepancy between his physical condition and what his physician, Dr. Low, should have included in the objective findings. He further stated that he believed he was entitled to a greater schedule award. However, entitlement to a schedule award must be based on medical evidence in conformance with the A.M.A., *Guides*.⁷

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁶ See *Joseph Lawrence, Jr.*, *supra* note 5; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989).

⁷ See *Vanessa Young*, 55 ECAB ____ (Docket No. 04-562, issued June 22, 2004).

In this case, the Office based appellant's schedule award of 14 percent permanent impairment to the right upper extremity on the December 15, 2004 report of its Office medical adviser. The Office's procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from the attending physician is obtained.⁸ The Office medical adviser applied the A.M.A., *Guides* to the physical findings of Dr. Low, appellant's treating physician, to determine that appellant was entitled to a 14 percent impairment to the right upper extremity.

In his December 15, 2004 report, the Office medical adviser reviewed Dr. Low's August 27, 2004 report and applied the A.M.A., *Guides* to Dr. Low's findings. The Office medical adviser determined that, under Table 16-10, page 482, a Grade 3 impairment equaled to 40 percent impairment which, multiplied by the 5 percent maximum impairment based on the suprascapular nerve under Table 16-15, page 492, equaled a 2 percent impairment due to sensory deficit or pain. The Office medical adviser also determined that five percent impairment was due to loss of range of motion for the right shoulder. This was determined by finding under Figure 16-40, page 476, a flexion of 170 degrees equaled a 1 percent impairment and an extension of 30 degrees equaled 1 percent impairment; under Figure 16-43, page 477, an abduction of 165 degrees equaled a 1 percent impairment and an adduction of 50 degrees equaled a 0 percent impairment; under Figure 16-46, page 479, an internal rotation of 55 degrees equaled a 2 percent impairment and an external rotation of 75 degrees equaled a 0 percent impairment.

The Board notes that the Office medical adviser also found a seven percent impairment due to loss of strength. Section 16.8a of the A.M.A., *Guides*, at page 508, specifically provides that only in rare cases, where the examiner believes that loss of strength represents an impairing factor not adequately considered by other methods in the A.M.A., *Guides*, should loss of strength be rated separately. The A.M.A., *Guides* note that impairment based on objective anatomic findings take precedence and further note that decreased strength cannot be rated in the presence of decreased motion that prevent effective application of maximal force in the region being evaluated.⁹ Thus, without further discussion explaining the special circumstances that would merit inclusion of a loss of strength rating in the presence of decreased motion ratings, the Office medical adviser cannot properly combine the findings under Table 16-35 with the previously calculated loss of motion findings as it would result in a duplicative finding. By combining the loss of motion finding of five percent with the sensory deficit or pain finding of two percent and utilizing the Combined Values Chart on page 604, the Board notes that appellant's total impairment for his right upper extremity would equate to a seven percent impairment. The Board further notes that even if the range of motion findings are excluded and the Office medical adviser's seven percent impairment finding for loss of strength were combined with the two percent sensory deficit or pain impairment, under the Combined Values Chart on page 604, appellant's total impairment for his right upper extremity would equate to a nine percent impairment. Thus, there is no medical evidence of record, correctly based on the A.M.A.,

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

⁹ A.M.A., *Guides* at 508 (5th ed. 2001).

Guides, which establishes that appellant has greater than a 14 percent impairment of the right upper extremity, which the Office awarded.¹⁰

The Act provides a maximum of 312 weeks of compensation for permanent impairment to the arm.¹¹ As the Office awarded appellant a 14 percent impairment to the right arm and appellant had previously been awarded 5 percent impairment, appellant is entitled to an additional award of 9 percent impairment. Five percent impairment to the right arm results in 15.6 weeks of compensation, which appellant was previously paid and nine percent impairment to the right arm results in 28.08 weeks of compensation, which appellant was awarded in the Office's December 30, 2004 decision, for a total of 43.68 weeks of compensation.

CONCLUSION

Appellant failed to establish that he was entitled to more than a 14 percent impairment of the right upper extremity which the Office had previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated December 30, 2004 is affirmed.

Issued: August 9, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

¹⁰ The Board notes that appellant retains the right to request an increased schedule award based on medical evidence indicating a progression in his employment-related condition. *Linda T. Brown*, 51 ECAB 115 (1999).

¹¹ 5 U.S.C. § 8107(c)(2).