

On December 1, 2000 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left upper extremity.

On April 6, 2001 the Office granted appellant a schedule award for a 22 percent impairment of the left upper extremity for the period December 6, 2000 to April 3, 2002, for a total of 68.64 weeks of compensation.

By letter dated December 11, 2002, the Office indicated that appellant's claim had been accepted for bilateral rotator cuff repair, left osteotomy, scapula and clavicle KI. Appellant underwent right rotator arthroscopy/debridement surgery on December 2, 2002.

On May 9, 2003 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right upper extremity.

By letter dated May 19, 2003, the Office advised appellant that, as she was currently receiving disability compensation for a bilateral shoulder injury, she was not entitled to a schedule award. The Office stated that concurrent payment of disability compensation and a schedule award for the same injured body part was not permitted under the Federal Employees' Compensation Act. The Office advised appellant, when she returned to work, to obtain an impairment rating for her bilateral shoulder injury.

In a report dated April 10, 2003, Dr. W. Scott Bowen, a Board-certified orthopedic surgeon and the attending physician, stated that appellant had reached maximum medical improvement following rotator cuff repair surgery of her right shoulder four months prior. On July 11, 2003 appellant accepted a return to light duty. She formally retired from the employing establishment on September 11, 2003. Thereafter, she again requested a schedule award for her right upper extremity.

In a report dated January 13, 2004, Dr. Bowen stated that appellant had fully recovered from arthroscopic surgery of the right shoulder, although she still experienced discomfort with overhead activities and some pain at night. He stated:

“On exam[ination], [appellant] is a little tender over the anterior acromial area. There is some pain on forward flexion. She can forward flex to 160 degrees. She is able to abduct to 130 degrees and has internal rotation reaching her thumb to the mid lumbar level and external rotation of 60 degrees noted with her arm adducted to her side. This represents a mild loss of motion and some mild residual pain.”

Dr. Bowen submitted a January 23, 2004 impairment evaluation which accorded appellant a five percent impairment of the right upper extremity pursuant to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

By decision dated March 18, 2004, the Office denied appellant's claim for a schedule award. The Office stated that appellant had already been paid for a permanent impairment to a scheduled member due to her accepted work injury; therefore, she was not entitled to an additional award.

LEGAL PRECEDENT

The schedule award provision of the Act¹ sets 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. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (5th ed.) as the standard to be used for evaluating schedule losses.³

ANALYSIS

The Board finds that the case is not in posture for decision. In the present case, the Office found that appellant had already been paid for a permanent impairment to a scheduled member due to her accepted work injury; therefore, she was not entitled to an additional award. However, as appellant noted in her appeal to the Board, the award she previously received pertained to her accepted “left” shoulder injury. The medical evidence she submitted prior to the Office’s March 18, 2004 decision pertains to impairment of her right shoulder, which the Office did not consider. Appellant correctly stated that since the schedule award which she previously received was in regard to her left upper extremity; *i.e.*, her left shoulder, and Dr. Bowen issued an impairment rating based on the right shoulder, the Office should have considered the medical evidence she submitted in connection with whether she was entitled to a schedule award based on her accepted right shoulder condition. The Board therefore finds that the Office erred in failing to consider Dr. Bowen’s report and determine whether appellant was entitled to a schedule award for permanent impairment of the right upper extremity. Accordingly, the Board will set aside the Office’s March 18, 2004 decision and remand the case to the Office for further development of the medical evidence, and determine whether appellant is entitled to a schedule award for permanent impairment of the right upper extremity. On remand, the Office should instruct Dr. Bowen to provide a well-rationalized opinion, to specifically refer to the applicable tables and standards of the A.M.A., *Guides* in making his findings and conclusions and in rendering his impairment rating, and to clearly indicate the specific background upon which he based his opinion.⁴ After such development as it deems necessary, the Office shall issue a *de novo* decision.

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

⁴ The Board notes that Dr. Bowen rendered his rating in accordance with the fourth edition of the A.M.A., *Guides*. The Office should instruct Dr. Bowen, on remand, to issue his impairment in accordance with the fifth edition of the A.M.A., *Guides*.

CONCLUSION

The Board vacates and remands for further development the Office's determination that appellant is not entitled to any additional award for a schedule member of her body under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2004 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Issued: May 23, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member