

upper extremity. In a September 27, 2004 report, Dr. David Weiss, an osteopath and Board-certified family practitioner, reviewed the history of injury, subsequent dislocations of the shoulder and surgery of April 5, 2004. He diagnosed status post anteroinferior dislocation of the right shoulder and status post right shoulder inferior capsular shift. Examination of the right shoulder revealed focal acromioclavicular point tenderness with range of motion findings consisting of a forward elevation of 140 degrees, abduction of 160 degrees, crossover adduction of 35 degrees and external rotation of 80 degrees and internal rotation of 65 degrees. Negative results were obtained for the circumduction test, Hawkins impingement sign, drop test and O'Brian test, anterior apprehension sign and posterior relocation sign. Manual muscle strength of the supraspinatus musculature was a Grade 4, deltoid muscle strength was a Grade "3+," biceps strength was a Grade 5 and triceps strength was a Grade 5. Grip strength testing was also performed. Appellant had right shoulder pain and stiffness on a daily basis that waxed and waned and had restrictions in activities of daily living. Utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Weiss opined that appellant reached maximum medical improvement on September 27, 2004 and had a nine percent right upper extremity impairment. He allowed six percent for range of motion impairment, consisting of three percent impairment for right shoulder flexion,¹ one percent impairment for right shoulder abduction,² and two percent impairment for right shoulder internal rotation³ and three percent impairment for pain.⁴

In a June 14, 2005 report, an Office medical adviser found that appellant had a six percent permanent impairment of the right upper extremity. The Office medical adviser allowed 3 percent impairment for flexion under Figure 16-40, page 476, a 1 percent impairment for abduction under Figure 16-43, page 477 and a 2 percent impairment for internal rotation under Figure 16-46, page 479. The Office medical adviser found that three percent impairment for pain could not be awarded since pain was not recorded on multiple visits.

By decision dated August 12, 2005, the Office issued a schedule award for a six percent permanent impairment of the right upper extremity.

On October 24, 2005 appellant requested reconsideration and argued that the impairment rating should have included pain. Counsel referred to appellant's statement, a January 12, 2004 report from Dr. Michael Greller, a Board-certified orthopedic surgeon and treating physician, and an emergency physician's report of February 4, 2004 from the Centrastate Medical Center.

In an October 13, 2005 report, Dr. Weiss noted that the Office medical adviser had disagreed that three percent impairment was warranted for pain. He stated that, at the time of his examination, appellant's pain level was 6-7 out of 10, which put him in the areas of distressing to horrible pain. In terms of activities of daily living, appellant noted that his work as a letter carrier exacerbated his pain, his household duties were modified and restricted, he had postural

¹ A.M.A., *Guides*, Figure 16-40, page 476.

² *Id.* at Figure 16-43, page 477.

³ *Id.* at Figure 16-46, page 476.

⁴ *Id.* at Table 18-1, page 574.

sleep difficulties and difficulty performing overhead reaching and overhead lifting and difficulty with prolonged driving. Hobbies/sporting activities were also restricted and appellant was unable to perform carpentry. Dr. Weiss referenced the A.M.A., *Guides* at Figure 18-1, page 574, and concluded that appellant was entitled to an additional three percent impairment rating according to the pain scale level provided by appellant and restrictions in activities of daily living. He reiterated that the right upper extremity was nine percent.

By decision dated January 30, 2006, the Office denied modification of the August 12, 2005 decision.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.⁶

Under section 8107 of the Act⁷ and section 10.404 of the implementing federal regulation,⁸ 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*⁹ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.¹⁰

ANALYSIS

The Office based appellant's schedule award of a six percent permanent impairment to the right upper extremity on the June 14, 2005 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.¹¹

In a June 14, 2005 report, the Office medical adviser compared the findings of Dr. Weiss with the provisions of the A.M.A., *Guides*. He reviewed shoulder motion impairment under

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

¹⁰ See *Joseph Lawrence, Jr.*, *supra* note 9; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

Figure 16-40, Figures 16-43 and 16-46¹² to find that appellant had a six percent range of motion impairment. The Board notes that 140 degrees of flexion is a 3 percent impairment under Figure 16-40; 160 degrees of abduction is a 1 percent impairment under Figure 16-43; and 65 degrees of internal rotation is a 2 percent impairment under Figure 16-46. The Board notes that none of Dr. Weiss' other range of motion findings represent a measurable impairment under the A.M.A., *Guides*. Appellant has a total range of motion impairment of six percent, for which he received a schedule award.

Dr. Weiss also noted appellant's subjective complaints of pain to which he attributed an additional three percent impairment. The Board notes that, although Dr. Weiss applied a section of the A.M.A., *Guides* for rating pain-related impairment,¹³ a separate pain calculation under Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory deficit or pain as outlined in Chapters 13, 16 and 17 of the fifth edition of the A.M.A., *Guides*.¹⁴ The additional evidence appellant submitted in support of his complaints of pain is also insufficient to support a greater impairment. The Board has held that the amount payable pursuant to a schedule award does not take into account the effect the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other life style activities.¹⁵

While appellant, on appeal, asserts entitlement to a greater schedule award, there is no medical evidence in conformance with the A.M.A., *Guides* that supports a higher percentage of impairment. As noted above, the A.M.A., *Guides* has been adopted by the Office as the appropriate standard for evaluating schedule losses.

CONCLUSION

The Board finds that appellant has no more than a six percent permanent impairment of his right upper extremity due to range of motion impairment.

¹² A.M.A. *Guides* (5th ed. 2001), Figure 16-40, Impairments Due to Lack of Flexion and Extension of Shoulder, p. 476; Figure 16-43, Impairment Due to Lack of Abduction and Adduction of Shoulder, p. 477; and Figure 16-46, Impairment Due to Lack of Internal and External Rotation of Shoulder, p. 479.

¹³ A.M.A., *Guides* 574 (Figure 18-1).

¹⁴ See FECA Bulletin No. 01-05 (issued January 31, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, Schedule Awards, Chapter 3.700 Exhibit 4 (June 2003). See also *Philip A. Norulak*, 55 ECAB ____ (Docket No. 04-817, issued September 3, 2004).

¹⁵ See *Ruben Franco*, 54 ECAB 496 at n.6 (2003).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 30, 2006 is affirmed.

Issued: August 11, 2006
Washington, DC

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

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