

¹ Docket No. 03-1444 (issued April 29, 2004).

the weight of the evidence and supported a finding that appellant had a greater impairment of the left upper extremity than the schedule award reflected.² Dr. Quenzer was found to be the only physician who included an impairment rating for appellant's left distal clavicle arthroscopy. Thus, the Board set aside the Office's March 10, 2003 decision and remanded the case for further development to determine whether the impairment from appellant's arthroplasty, combined with impairment from his decreased motion, entitled him to a greater schedule award than he had received. The facts and the history contained in the prior appeal are incorporated by reference.

On October 28, 2002 the Office issued a schedule award for an 18 percent permanent impairment of the right upper extremity and a 3 percent impairment of the left upper extremity. On March 10, 2003 the Office vacated the prior decision and noted appellant had been awarded a schedule award for an 18 percent impairment of the right upper extremity and a 10 percent impairment for the left upper extremity.

On June 10, 2004 the Office issued appellant an additional 9 percent impairment for his left upper extremity. The Office noted that appellant had previously been paid for a 7 percent left shoulder impairment and a 3 percent impairment for the left wrist which combined with the additional 9 percent, resulted in a total 19 percent left upper extremity impairment.

On December 21, 2004 appellant was awarded an 11 percent bilateral upper extremity impairment based on a 7 percent impairment of the right elbow and a 4 percent impairment of the left elbow.

² On February 13, 1990 appellant, then a 42-year-old mailhandler, filed a traumatic injury claim alleging that he injured his left knee in the performance of duty on that date. This was assigned claim number 11-0100206. The Office doubled claim number 11-75932, which had been accepted for a left knee condition, with claim number 11-0100206, on February 21, 1990. On January 5, 1998 appellant, then a 49-year-old mail handler, filed an occupational disease claim alleging that on December 15, 1997 he first realized his bilateral epicondylitis was employment related. This was assigned claim number 11-0164506. The Office accepted the claim for bilateral epicondylitis and left shoulder impingement syndrome. The Office authorized right shoulder arthroscopy with decompression of the subacromial space and right endoscopic carpal tunnel release, which was performed on January 10, 2000. On July 6, 1998 appellant filed an occupational disease claim alleging his right wrist and elbow conditions were employment related. This was assigned claim number 11-0166680 and the Office accepted the claim for aggravation of right shoulder and right elbow degenerative joint disease. The Office subsequently authorized right shoulder surgical repair, which occurred on June 1, 2001 and arthroscopic repair of the left shoulder and excision of the left distal clavicle, which occurred on October 8, 2001. On June 12, 1999 appellant filed an occupational disease claim alleging that his bilateral carpal tunnel and shoulder pain was employment related. This was assigned claim number 11-0172208 and was accepted for bilateral carpal tunnel syndrome with right carpal tunnel release surgery authorized, which was performed on January 10, 2000. On August 18, 1999 appellant filed a traumatic injury claim alleging he injured his right knee that date in the performance of duty. The claim was assigned claim number 11-0173182 and the Office accepted a right tibial plateau fracture. The record contains evidence of other claims filed by appellant. Claim number 11-0075932 was accepted for aggravation of osteochondritic lesion of the left knee and was combined with claim number 11-0100206. Claim number 11-0100206 was listed as the master number. On October 28, 2002 the Office accepted appellant's claim for a left knee strain and assigned this claim number 11-2001850. On February 11, 2003 the Office combined claim number 11-2001850 and 11-0164506, with the latter number as the master file number. The Office denied appellant's emotional condition claim, which was assigned claim number 11-0182661. In claim number 11-0160846, the Office accepted appellant's claim for contusion of the right elbow. On October 21, 2003 appellant filed an occupational disease claim alleging that his finger and hand condition was employment related. This was assigned claim number 11-2018374 and was accepted for bilateral tendinitis of the hands. On January 20, 2004 the Office doubled claim number 11-016546 and claim number 11-2018374. Appellant retired effective September 3, 2004.

In a letter dated January 16, 2005, appellant requested a review of the written record by an Office hearing representative. He contended that he “was shorted approx[imately] three percent because of all figures not represented.”

On May 9, 2006 Dr. Ronald S. Bergman, an examining osteopath, reported that appellant complained of “stiffness, numbness and weakness in both hands and wrists.” Using section 16.5 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.), he concluded that appellant had a 5 percent impairment of the right upper extremity and a 18 percent impairment of the left upper extremity due to loss of strength and range of motion impairment.

In a May 11, 2006 report, Dr. Peter D. Wirtz, an examining Board-certified orthopedic surgeon, diagnosed bilateral shoulder decompression, bilateral distal clavicle excision and other orthopedic joint conditions. He concluded that appellant had 3 percent impairment for 135 degrees of flexion (forward elevation),³ 4 percent for 90 degrees of abduction,⁴ 1 percent impairment for 30 degrees adduction,⁵ no impairment for 90 degrees of external rotation and 80 degrees of internal rotation,⁶ and a 10 percent impairment for distal clavicle excision,⁷ which resulted in a total right upper extremity impairment of 18 percent. With respect to the left upper extremity, Dr. Wirtz concluded that appellant had a left upper extremity impairment of 3 percent for 135 forward elevation or flexion,⁸ 4 percent for 90 degrees of abduction,⁹ no impairment for 90 degrees of external rotation and 80 degrees of internal rotation,¹⁰ and a 10 percent impairment for distal clavicle excision,¹¹ resulting in a total right upper extremity impairment of 17 percent.

On December 13, 2006 an Office medical adviser noted that appellant had previously received schedule awards for a 15 percent impairment of the right shoulder, a 4 percent impairment for right carpal tunnel syndrome, 7 percent for a right elbow condition, a 16 percent impairment for the left shoulder, 3 percent impairment for left carpal tunnel syndrome and 4 percent impairment for a left elbow condition, resulting in a total right upper extremity impairment of 26 percent and a total left upper extremity impairment of 23 percent. As to Dr. Bergman’s May 9, 2006 report, the Office medical adviser determined that it failed to satisfy the requirements of the A.M.A., *Guides* and provided “no validation (actual measurements of [range of motion], sensory change, or weakness.” Based on Dr. Wirtz’s report, the Office

³ A.M.A., *Guides* 476, Figure 16-40.

⁴ *Id.* at 477, Figure 16-43.

⁵ *Id.*

⁶ *Id.* at 479, Figure 16-46.

⁷ *Id.* at 506, Table 16-27.

⁸ *Id.* at 476, Figure 16-40.

⁹ *Id.* at 477, Figure 16-43.

¹⁰ *Id.* at 479, Figure 16-46.

¹¹ *Id.* at 506, Table 16-27.

medical adviser concluded that appellant was entitled to a 10 percent impairment for distal clavicle excision using Table 16-27 and an 8 percent impairment for decreased range of motion resulting in a total 17 percent impairment of the right upper extremity for his shoulder. He noted Dr. Wirtz incorrectly concluded that appellant had a total 18 percent right upper extremity impairment. Using the combined values table, combining 10 percent and 8 percent results in a 17 percent impairment. Next, the Office medical adviser used the combined values tables to combine the 17 percent impairment for appellant's right shoulder with 7 percent for the right elbow and 4 percent for his carpal tunnel syndrome, resulting in a total right upper extremity impairment of 26 percent. As to the left upper extremity, the Office medical adviser noted using Dr. Wirtz's report that appellant had a 7 percent impairment for decreased range of motion in the left shoulder which when combined with the 10 percent impairment for left distal clavicle excisions resulted in 16 percent impairment for the left shoulder. He noted that appellant's left upper extremity schedule award was "not modified by Dr. Wirtz's report." In conclusion, the Office medical adviser determined that neither report by either Dr. Bergman or Dr. Wirtz warranted any additional impairment rating than what appellant had already received.

In a January 5, 2007 decision, the Office denied appellant's request for an increased schedule award based upon an Office medical adviser's report. The Office noted that appellant had previously received a schedule award for a 26 percent impairment of the right upper extremity and a 16 percent impairment of the left upper extremity.

In a letter dated January 10, 2007, appellant requested reconsideration. He contended that he has only been paid for a 25 percent impairment of the right upper extremity and not the 26 percent impairment the Office found he was entitled to. Due to this discrepancy in payment for the incorrect impairment, appellant was entitled to an additional payment for 1 percent, the difference between what he was owed (26 percent) and what he was paid (25 percent). He also alleges that, based upon Dr. Wirtz's May 11, 2006 impairment rating of 18 percent for his right shoulder, he is entitled to a total 28 percent impairment of the right upper extremity when this is combined with the 4 percent impairment for the right wrist and 9 percent impairment for the right elbow. As he had only been paid for 25 percent impairment of the right upper extremity, he contended that the Office owed him an additional 3 percent for his right upper extremity. With respect to his left upper extremity he contended that he was entitled to a 24 percent impairment based on a 16 percent impairment of the left shoulder, 3 percent impairment of the left wrist and a 6 percent impairment for the left elbow. As the Office had only paid him for a 23 percent impairment, he was entitled to an additional 1 percent based on the 24 percent left shoulder impairment. Thus, appellant claimed he was entitled to an additional four percent impairment for his bilateral upper extremity conditions.

In a letter dated March 1, 2007, appellant requested reconsideration and contended that the Office did not pay him the correct amount for its impairment rating. He noted that the Office stated he was entitled to a 26 percent impairment of the right upper extremity, but that the Office only issued a schedule award for a 25 percent impairment of the right upper extremity. Appellant also contended that combining 4 percent and 9 percent and the 17 percent for the right shoulder results in a 28 percent total impairment of the right upper extremity. As he had only been paid for a 25 percent impairment and he had a 28 percent impairment, this resulted in the Office owing him an additional 3 percent for his right upper extremity. Similarly, appellant noted that the Office determined he had a 24 percent impairment of the left upper extremity, but

only paid him for a 23 percent impairment. Thus, he argues that the Office owes him an additional one percent for his left upper extremity and an additional three percent for his right upper extremity, for a total amount of four percent for both upper extremities.

On May 27, 2007 an Office medical adviser reviewed appellant's March 1, 2007 contentions regarding his impairment ratings. The Office medical adviser determined that appellant's March 1, 2007 letter "is not an acceptable basis to revise upper extremity schedule awards."

By decision dated May 31, 2007, the Office denied appellant's request for modification of the January 5, 2007 decision. The Office relied on the Office medical adviser's opinion that appellant did not provide any basis for an increased impairment rating.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act¹² and section 10.404 of the implementing federal regulations,¹³ schedule awards are payable for permanent impairment of specified body members, functions or organs.¹⁴ 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*¹⁵ has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹⁶

ANALYSIS

The Office accepted appellant's claims for bilateral epicondylitis, left shoulder impingement syndrome aggravation of degenerative joint disease of the right shoulder and right elbow and bilateral carpal tunnel syndrome of the wrists and shoulder pain due to repetitive employment work. The Office authorized right shoulder arthroscopy with decompression of the subacromial space and right endoscopic carpal tunnel surgery, right shoulder surgical repair, which occurred on June 1, 2001, arthroscopic repair of the left shoulder and excision of the left distal clavicle, which occurred on October 8, 2001 and right carpal tunnel release was performed on January 10, 2000.

Appellant submitted reports by Drs. Bergman and Wirtz in support of his claim that he is entitled to an additional schedule award. Dr. Bergman concluded that appellant had a 5 percent impairment of the right upper extremity and a 18 percent impairment of the left upper extremity

¹² 5 U.S.C. § 8107.

¹³ 20 C.F.R. § 10.404.

¹⁴ See *H.S.*, 58 ECAB ____ (Docket No. 07-1176, issued September 17, 2007).

¹⁵ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

¹⁶ 20 C.F.R. § 10.404. See *T.A.*, 59 ECAB ____ (Docket No. 07-1836, issued November 20, 2007).

due to loss of strength and range of motion impairment using the A.M.A., *Guides* (5th ed.). His report contains no range of motion measurements nor does it note any sensory or motor changes. Dr. Bergman failed to explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.¹⁷ While he referenced section 16.5 of the A.M.A., *Guides*, he did not refer to any specific tables or charts in the A.M.A., *Guides* or provide his calculations in support of this determination. Dr. Bergman's report is of diminished probative value in determining the extent of appellant's permanent impairment.

On May 11, 2006 Dr. Wirtz found that appellant sustained a total of 18 percent impairment of the right upper extremity and a 17 percent impairment of the left upper extremity in accordance with the A.M.A., *Guides*, based on loss of shoulder motion and distal clavicle surgery. He concluded that appellant's right upper extremity impairment of 3 percent, 4 percent for 90 degrees of abduction, 1 percent impairment for 30 degrees adduction, no impairment for external and internal rotation and 10 percent impairment for distal clavicle excision, which resulted in a total right upper extremity impairment of 18 percent. With respect to the left upper extremity, Dr. Wirtz concluded that appellant had a left upper extremity impairment of 3 percent for forward elevation or flexion, 4 percent for 90 degrees of abduction, no impairment for external and internal rotation and 10 percent impairment for distal clavicle excision, which resulted in a total right upper extremity impairment of 17 percent.

The Office medical adviser reviewed the report of Dr. Wirtz and agreed with his impairment rating. He noted that appellant had previously received schedule awards for a 15 percent impairment of the right shoulder, a 4 percent impairment for right carpal tunnel syndrome, 7 percent for a right elbow condition, a 16 percent impairment for the left shoulder, 3 percent impairment for left carpal tunnel syndrome and 4 percent impairment for a left elbow condition, resulting in a total right upper extremity impairment of 26 percent and a total left upper extremity impairment of 23 percent. Based on Dr. Wirtz's report, the Office medical adviser concluded that appellant was entitled to 10 percent impairment for distal clavicle excision using Table 16-27 and an 8 percent impairment for decreased range of motion resulting in a total 17 percent impairment of the right upper extremity for appellant's shoulder. Using the combined values table, he then combined the 17 percent impairment for appellant's right shoulder with 7 percent for the right elbow and 4 percent for his carpal tunnel syndrome, resulting in a total right upper extremity impairment of 26 percent. As to the left upper extremity, the Office medical adviser concluded that appellant had 7 percent impairment for decreased range of motion in the left shoulder which when combined with the 10 percent impairment for left distal clavicle excisions resulted in 16 percent impairment for the left shoulder. He noted that appellant's left upper extremity schedule award was "not modified by Dr. Wirtz's report." The Office medical adviser's report conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 26 percent impairment of the right upper extremity and a 23 percent impairment of the left upper extremity. Appellant did not submit any medical

¹⁷ *Laura Heyen*, 57 ECAB 435 (2006) (Board precedent is well settled that, when an attending physician's report gives an estimate of impairment but does not address how the estimate is based upon the A.M.A., *Guides*, the Office is correct to follow the advice of its medical adviser or consultant where he or she has properly applied the A.M.A., *Guides*).

evidence supporting greater than 26 percent permanent impairment of the right upper extremity and 23 percent impairment of the left upper extremity.¹⁸

CONCLUSION

The Board finds that appellant has not established that he is entitled to a greater than 26 percent impairment of his right upper extremity and a 23 percent impairment of his left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 31, 2007 is affirmed.

Issued: May 13, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁸ On appeal appellant contends that the Office calculated his schedule awards incorrectly when combining the different values. He also contends that the Office paid him a total of 25 percent for the right upper extremity and not 26 percent as the Office found he was entitled to for his right upper extremity impairment. A review of the record indicates that the Office paid appellant for an 18 percent right upper extremity impairment in a March 10, 2003 decision and 7 percent for his right elbow in a June 10, 2004 decision. Adding the 18 percent and 7 percent results in the Office having paid appellant for a 25 percent impairment of the right upper extremity. As noted above, the medical evidence establishes that appellant is entitled to be paid for a 26 percent impairment of the right upper extremity. As appellant has only been paid for 25 percent impairment for the right upper extremity, he is entitled to an additional 1 percent.