

On December 6, 2004 appellant, then a 53-year-old electronic mechanic, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2004 he sustained injury when he lifted a box from a shelf. On January 24, 2005 the Office advised him that the claim had been accepted

for a right shoulder strain. An April 21, 2005 letter stated that the claim was also accepted for aggravation of displaced intervertebral discs (C5-6, C6-7).<sup>1</sup>

Appellant underwent a cervical discectomy on May 16, 2005 and right shoulder arthroscopy on March 8, 2006. An occupational therapist performed a functional capacity evaluation on July 6, 2005. In a report dated April 14, 2006, the attending orthopedic surgeon, Dr. William Stewart, opined that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* appellant had a seven percent whole person impairment “status post cervical fusion without residuals.” He also reported a 5 percent whole person impairment “status post arthroscopy with subacromial decompression of the right shoulder,” for a combined 12 percent whole person impairment.

The Office requested that an Office medical adviser review the medical evidence. In a report dated April 20, 2006, the medical adviser opined that appellant did not have a ratable impairment. He noted that an impairment to the spine is not allowed under the Federal Employees’ Compensation Act. The medical adviser also noted that the July 6, 2005 functional capacity evaluation showed normal range of motion and strength, with no nerve root defect.

On July 16, 2007 the Office received a report from Dr. Stewart which again was dated April 14, 2006. Dr. Stewart stated that appellant had a seven percent whole person impairment “status post cervical fusion C5-6 and C6-7, without residuals.” He also reported an eight percent right upper extremity impairment “status post arthroscopy with subacromial decompression of the right shoulder.”

By decision dated October 2, 2007, the Office found that the medical evidence did not establish a permanent impairment to a scheduled member or function of the body under 5 U.S.C. § 8107.

### **LEGAL PRECEDENT**

Section 8107 of the Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>3</sup> The medical

---

<sup>1</sup> An April 20, 2006 letter to an Office medical adviser reported the accepted conditions as right shoulder impingement and cervical herniated nucleus pulposus.

<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>3</sup> A. George Lampo, 45 ECAB 441 (1994).

evidence necessary to support a schedule award includes a physician's report that provides a detailed description of the impairment.<sup>4</sup>

### **ANALYSIS**

The attending physician, Dr. Stewart, did not provide a medical report with a detailed description of a permanent impairment to a scheduled member of the body. He refers generally to the cervical fusion and the shoulder arthroscopy, without clearly describing an impairment to the arm. Dr. Stewart did not, for example, provide range of motion results or other relevant examination results. To the extent that Dr. Stewart found an impairment to the cervical spine, neither the Act nor its regulations provide for a schedule award for impairment to the back. Furthermore, the back is specifically excluded from the definition of "organ" under the Act.<sup>5</sup> Dr. Stewart's reference to whole person impairments is also of little probative value. The Act does not provide for whole person impairments; only impairments to specified members of the body under 5 U.S.C. § 8107 and 20 C.F.R. § 10.404 is appropriate for a schedule award under the Act.<sup>6</sup>

In his second April 14, 2006 report, Dr. Stewart reported an eight percent right arm impairment, noting the right shoulder arthroscopy. He did not identify any specific table or figure under the A.M.A., *Guides*, or otherwise describe how the percentage was calculated. Dr. Stewart's report is therefore of diminished probative value on the issue presented. The Board accordingly finds the medical evidence of record does not establish a ratable permanent impairment to a scheduled member or function of the body causally related to the December 4, 2004 employment injuries. The Office properly found appellant was not entitled to a schedule award under 5 U.S.C. § 8107.

### **CONCLUSION**

The medical evidence does not establish a permanent impairment under the A.M.A., *Guides* to a scheduled member or function of the body.

---

<sup>4</sup> See *James E. Jenkins*, 39 ECAB 860 (1988); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

<sup>5</sup> See *James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

<sup>6</sup> *Janae J. Triplette*, 54 ECAB 792 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 2, 2007 is affirmed.

Issued: May 15, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board