



the oil level of a “humvee,” the hood fell and as he attempted to catch it with his right hand, he pulled his shoulder. By letter dated December 13, 2001, the Office accepted appellant’s claim for right shoulder strain/impingement syndrome and authorized a right shoulder arthroscopy. On March 14, 2002 appellant underwent an arthroscopy of his right shoulder with subacromial decompression and extensive debridement.

On June 16, 2002 appellant filed a claim for a schedule award. In an August 5, 2002 report, Dr. Thomas Harris, an attending physician indicated that measurements of motion for appellant’s right shoulder indicated extension of 30 degrees, flexion of 170 degrees, internal rotation of 50 degrees, external rotation of 80 degrees, abduction of 150 degrees and adduction of 38 degrees. Dr. Thomas Harris used page 598, Table 16-7 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001), appellant had a 25 percent impairment of the right upper extremity secondary to recurrent anterior labrum tear and impingement syndrome. On November 18, 2002 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and Office medical adviser, reviewed the report of Dr. Thomas Harris and indicated that, pursuant to the A.M.A., *Guides*, appellant had a nine percent impairment of the right upper extremity. By decision dated December 23, 2002, the Office granted a schedule award for a nine percent impairment of the right upper extremity. By decision dated August 14, 2003, the Board vacated the schedule award and remanded the case for further development. The Board found a conflict between the medical opinion of Dr. Thomas Harris and Dr. Arthur S. Harris, with regard to the extent of impairment.

On remand, the Office referred appellant to Dr. Bunsri T. Sophon, an orthopedic surgeon,<sup>2</sup> for an impartial medical examination. In a medical report dated October 22, 2003, Dr. Sophon noted a diagnosis of right shoulder impingement syndrome and status post arthroscopic subacromial decompression. He stated his findings on examination of appellant’s right shoulder.

On November 12, 2003 the Office referred the record to the Office medical adviser. In a report dated November 19, 2003, Dr. Arthur S. Harris, the same Office medical adviser who originally evaluated appellant’s case. Dr. Arthur S. Harris estimated a 13 percent impairment, noting that the increase in impairment from his last report was the result of documentation of a greater loss of motion of the right shoulder by Dr. Sophon.

In a decision dated December 15, 2003, the Office issued an additional four percent impairment of the right upper extremity. The award was in addition to the nine percent schedule award previously issued.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees’ Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specific members, functions

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<sup>2</sup> Although Dr. Sophon indicates in his letterhead that he is Board-certified, he is not listed in the American Medical Association, *Directory of Physicians in the United States* (37<sup>th</sup> ed. 2001) or on the American Board of Medical Specialties web site.

and organs of the body.<sup>3</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulation have adopted the A.M.A., *Guides*, as the appropriate standard for evaluating schedule losses.<sup>4</sup>

The Board has held that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion evidence, the opinion of the specialist, if sufficiently well rationalized and based on a proper medical background, must be given special weight.<sup>5</sup>

### ANALYSIS

In this case, to resolve the conflict between Dr. Thomas Harris and Dr. Arthur S. Harris with regard to the amount of impairment to appellant's right upper extremity, the Office referred appellant to Dr. Sophon. Although Dr. Sophon indicated on his letterhead that he is a Board-certified orthopedic surgeon, he is not listed in the applicable medical directory or on the American Board of Medical Specialties web site as a Board-certified specialist in the field of orthopedic surgery. Absent any documentation of special qualifications which might exempt Dr. Sophon from the requirement that he be Board-certified, he cannot serve as an impartial specialist in the present case.<sup>6</sup>

Therefore, there remains an unresolved conflict in medical opinion in this case. The Office should refer appellant, the case record and a statement of accepted facts to an appropriate physician, who is properly Board-certified for a reasoned medical opinion regarding appellant's degree of upper extremity impairment.

### CONCLUSION

As there remains an unresolved conflict in the medical evidence, this case will be remanded for further development consistent with this decision.

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Mary A. Moultry*, 48 ECAB 566 (1997).

<sup>6</sup> "A physician who is not Board-certified may be used if he or she has special qualifications for performing the examination, but the [medical management assistant] must document the reasons for the selection in the case record." Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (March 1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 15, 2003 is vacated and this case is remanded for further consideration consistent with this opinion.

Issued: August 9, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member