



claim, appellant submitted medical reports from Dr. David K. Wong, his treating Board-certified orthopedic surgeon, including an operative report establishing that, on November 14, 2001, appellant underwent right shoulder arthroscopic subacromial decompression, received a right shoulder pain pump and also underwent right elbow lateral epicondylectomy.<sup>1</sup> Dr. Wong's reports do not address whether appellant had any permanent impairment as a result of the diagnosed conditions.

In a decision dated April 23, 2002, the Office denied appellant's occupational disease claim on the grounds that he failed to submit sufficient medical evidence to establish that his right shoulder and elbow conditions were causally related to his employment. By letter dated May 22, 2002, appellant, through counsel, requested an oral hearing before an Office hearing representative. On December 16, 2002 however appellant amended his request to one for a review of the written record. In support of his request, appellant submitted a medical report dated May 10, 2002 from Dr. Wong, in which the physician stated that appellant suffered from right shoulder impingement syndrome, right lateral epicondylitis and right carpal tunnel syndrome and that these conditions were causally related to appellant's work duties. Dr. Wong did not discuss whether appellant had any permanent impairment as a result of the diagnosed conditions.

In a decision dated March 17, 2003, an Office hearing representative set aside the Office's prior decision on the grounds that the medical evidence was sufficient to require further medical development. The Office hearing representative remanded the case for referral to a second opinion physician.

On remand, the Office referred appellant, together with the medical record, a statement of accepted facts and a list of questions to be answered, to Dr. Robert P. Shackelford, a Board-certified orthopedic surgeon, for a second opinion. In a report dated May 21, 2003, Dr. Shackelford diagnosed impingement syndrome of the right shoulder and lateral epicondylitis of the right elbow, causally related to appellant's employment duties, and stated that appellant had reached maximum medical improvement on April 18, 2002, when he was released from Dr. Wong's care. Dr. Shackelford evaluated appellant's range of shoulder and elbow motion pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and concluded that appellant had a four percent permanent impairment of his right upper extremity.

On June 9, 2003 the Office accepted appellant's claim for right shoulder impingement syndrome and right lateral epicondylitis, and referred appellant's medical record to an Office medical adviser for calculation of the degree of permanent impairment.

On July 31, 2003 an Office medical adviser reviewed Dr. Shackelford's evaluation and concurred with his findings. The Office medical adviser found, however, that appellant actually

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<sup>1</sup> Appellant submitted reports from Dr. Wong dated June 11, July 12, August 21, October 24, November 14 and 27 and December 20, 2001 and January 24, 2002.

had a five percent permanent impairment of his right upper extremity. On August 11, 2003 the Office issued appellant a schedule award for a five percent permanent impairment of his right upper extremity.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.404 of the implementing federal regulation,<sup>3</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, the Act 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* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup> Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards.<sup>5</sup>

### **ANALYSIS**

In support of his claim, appellant submitted numerous reports from Dr. Wong, his treating Board-certified orthopedic surgeon, in which the physician stated that appellant suffered from right shoulder impingement syndrome, right lateral epicondylitis and right carpal tunnel syndrome and that these conditions, and the associated surgery, were causally related to appellant's work duties. Dr. Wong did not discuss, however, whether appellant had any permanent impairment as a result of the diagnosed conditions. While appellant asserts on appeal that Dr. Wong completed an April 18, 2002 report in which he concluded that appellant has an 18 percent permanent impairment of the right upper extremity, this report is not contained in the record.

On May 21, 2003 Dr. Shackelford, a Board-certified orthopedic surgeon, performed a second opinion evaluation at the request of the Office. In his report, Dr. Shackelford provided his findings on range of motion testing of appellant's right shoulder and elbow, and correlated these findings with the appropriate sections of the A.M.A., *Guides*, to conclude that appellant had a four percent impairment of his right upper extremity. In arriving at this figure, Dr. Shackelford initially calculated that appellant had a 1 percent impairment of his right shoulder based on 160 degrees of forward flexion in accordance with Figure 16-40, page 476 of the A.M.A., *Guides*; extension of 30 degrees, which equated to a 0 percent impairment in accordance with Figure 16-40, page 476 of the A.M.A., *Guides*; a 1 percent impairment based on 150 degrees abduction in accordance with Figure 16-43, page 477 of the A.M.A., *Guides*; a 1 percent impairment based on 30 degrees of adduction in accordance with Figure 16-43, page

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>5</sup> FECA Bulletin No. 01-05 (issued January 29, 2001).

477 of the A.M.A., *Guides*; a 0 percent impairment for 60 degrees external rotation in accordance with Figure 16-46, page 479 of the A.M.A., *Guides*; and a 0 percent impairment for 80 degrees external rotation in accordance with Figure 16-46, page 479 of the A.M.A., *Guides*. With respect to appellant's right elbow, Dr. Shackelford found that appellant had a 0 percent impairment based on 140 degrees of flexion in accordance with Figure 16-34, page 472 of the A.M.A., *Guides*; extension of 0 degrees, which equated to a 0 percent impairment in accordance with Figure 16-34, page 472 of the A.M.A., *Guides*; a 0 percent impairment based on 70 degrees supination in accordance with Figure 16-37, page 474 of the A.M.A., *Guides*; and a 1 percent impairment based on 75 degrees of pronation in accordance with Figure 16-37, page 474 of the A.M.A., *Guides*.<sup>6</sup> Using the Combined Values Chart at page 604 of the A.M.A., *Guides*, Dr. Shackelford concluded that appellant's cumulative impairment for loss of shoulder motion of three percent, combined with the one percent impairment for loss of elbow motion, yielded a total permanent impairment of the right upper extremity of four percent.

Upon review of Dr. Shackelford's report, the Office medical adviser completely concurred with the physician's findings and his application of the A.M.A., *Guides*, except to find that a measured shoulder extension of 30 degrees actually equates to a 1 percent impairment, not a 0 percent impairment, pursuant to Figure 16-40, page 476 of the A.M.A., *Guides*. Using the Combined Values Chart at page 604 of the A.M.A., *Guides*, the Office medical adviser concluded that appellant's cumulative impairment for loss of shoulder motion of four percent, combined with the one percent impairment for loss of elbow motion, yielded a total permanent impairment of the right upper extremity of five percent.

The Office determined that appellant had a five percent permanent impairment of his right upper extremity based on the findings of Dr. Shackelford, the Office referral physician, and the Office medical adviser, who concurred with the majority of Dr. Shackelford's conclusions. The Board finds that the weight of the medical evidence is represented by the thorough and well-rationalized opinion of Dr. Shackelford, who noted that upon physical examination, appellant had no tenderness to palpation or sensory abnormalities and no evidence of atrophy, but several small restrictions of motion. Dr. Shackelford diagnosed impingement syndrome of the right shoulder and lateral epicondylitis of the right elbow, which is in general accord with the diagnoses provided by appellant's treating physician, Dr. Wong.<sup>7</sup> In addition, Dr. Shackelford's report was also reviewed by an Office medical adviser, who concurred with his findings, with the exception of granting appellant an extra degree of impairment for right shoulder extension deficit. The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* to the range of motion measurements provided by Dr. Shackelford in determining that appellant has a total of five percent permanent impairment of the right upper extremity due to loss of range of motion. Therefore, the Office properly determined that appellant was not entitled to more than a five percent permanent impairment of the right upper extremity.

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<sup>6</sup> As the measured degree of elbow pronation fell between the values listed in Figure 16-37, Dr. Shackelford rounded the degree of impairment to the next greater degree in accordance with paragraph 16.4h, page 470 of the A.M.A., *Guides*.

<sup>7</sup> While Dr. Wong also diagnosed right carpal tunnel syndrome, this condition was not accepted by the Office.

**CONCLUSION**

The Board finds that appellant has no more than a five percent permanent impairment of his right upper extremity for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 11 and March 17, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 10, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member