

American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition), (the A.M.A., *Guides*). Dr. Diamond noted that appellant had also sustained an injury to his right shoulder, and therefore calculated his impairment rating based on the combined effects of appellant's shoulder and thumb injuries. He derived at a 15 percent impairment based on right shoulder arthroplasty, pursuant to Table 16-27 at page 506 of the A.M.A., *Guides*; a four percent impairment based on right shoulder range of motion deficit, flexion, pursuant to Table 16-40 at page 476 of the A.M.A., *Guides*; a three percent impairment based on right shoulder range of motion deficit, abduction, pursuant to Table 16-43 at page 477 of the A.M.A., *Guides*; a five percent thumb impairment based on the metacarpophalangeal (MP) joint, flexion, for a total two percent impairment, under Table 16-15 at page 457 of the A.M.A., *Guides*; and a four percent thumb impairment based on the interphalangeal (IP) joint, flexion, for a total two percent impairment, under Table 16-12 at page 456 of the A.M.A., *Guides*. Dr. Diamond added an additional three percent impairment for pain, pursuant to Table 18-1, page 574.¹

On June 28, 2003 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right upper extremity.

In an impairment evaluation dated September 8, 2003, an Office medical adviser found that appellant had a nine percent impairment for his right thumb based on the A.M.A., *Guides*. The Office medical adviser arrived at this figure by restricting the overall impairment rating to one based solely on the right thumb. He derived the total impairment for the thumb by deriving a five percent impairment for abnormal motion at the MP joint pursuant to Figure 16-15 at page 457 of the A.M.A., *Guides*, and an additional four percent impairment for abnormal motion at the IP joint pursuant to Figure 16-12 at page 456 of the A.M.A., *Guides*.

On September 23, 2003 the Office granted appellant a schedule award for a nine percent permanent impairment of the right upper extremity for the period April 10 to May 27, 2003, for a total of 6.75 weeks of compensation.

By letter dated October 3, 2003, appellant's attorney requested a hearing, which was held on May 26, 2004.

In a decision dated August 19, 2004, an Office hearing representative affirmed the September 23, 2003 Office decision and denied appellant's claim for a greater additional award. The hearing representative stated that appellant had two different claims before the Office, one for a September 27, 1997 right shoulder injury and one for the June 24, 2002 thumb injury, and found that the impairment for each of these injuries should be rated separately. Thus, he found that the Office's decision confining appellant's award for upper extremity to one based solely on a right thumb to be proper.

¹ Dr. Diamond's calculations appeared to amount to a total 29 percent impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁴

ANALYSIS

In this case, the Office calculated a nine percent impairment of appellant's right thumb, but determined that any impairment based on his accepted shoulder condition should be considered in a separate claim. Thus, although the Office medical adviser calculated appellant's impairment of the right thumb by referencing the standards of the A.M.A., *Guides* relating to impairment associated with range of motion deficits of right thumb, he did not evaluate the possibility that appellant had additional impairment of his right upper extremity related to his right shoulder. Dr. Diamond's April 10, 2003 report makes note of pain symptoms, residuals from surgery and range of motion findings relating to appellant's right shoulder, and rated an additional 18 percent permanent impairment related to this area. It is well established that, in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body member are to be included.⁵ Thus, the Office hearing representative erred in his August 19, 2004 decision when he found that the impairments for appellant's September 27, 1997 right shoulder injury and his June 24, 2002 thumb injury should be rated separately. Given the fact that Dr. Diamond had rated a 27 percent total impairment for the right upper extremity based on impairments to both the right shoulder and the right thumb and given the fact that appellant had two different claims before the Office, these claims should have been consolidated to render the proper, total impairment for appellant's right upper extremity. Therefore, the Office's August 19, 2004 decision should be set aside and the case remanded to the Office for consolidation of appellant's two outstanding claims and for referral to an appropriate medical specialist in order to obtain a complete assessment of appellant's right upper extremity impairment in accordance with the standards of the A.M.A., *Guides*. Following such further development as deemed necessary, the Office should issue a *de novo* decision regarding the matter.

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

⁵ *See Dale B. Larson*, 41 ECAB 481, 490 (1990); *Pedro M. DeLeon, Jr.*, 35 ECAB 487, 492 (1983). The Board has held that where the residuals of an injury to a member of the body specified in the schedule award provisions of the Act extend into an adjoining area of a member also enumerated in the schedule, such as an injury of the finger into the hand, of a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage of loss of use of the larger member. *See Tonya D. Bell*, 43 ECAB 845, 849 (1992).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2004 decision is set aside and the case is remanded to the Office of Workers' Compensation Programs for further action consistent with this decision of the Board.

Issued: August 2, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board