

Office accepted his claim for bilateral shoulder tendinitis and subsequently accepted a bilateral rotator cuff tears and shoulder disorders of the bursae and tendons. On August 8, 2000 appellant had surgery on his right shoulder consisting of arthroscopy with debridement of the rotator cuff and labrum, subacromial decompression and distal clavicle debridement. A second right shoulder surgery on August 21, 2002 consisted of arthroscopy with debridement of a partial undersurface rotator cuff tear, arthroscopic repair of the superior labrum, subacromial decompression and distal clavicle excision. On September 15, 2003 appellant underwent surgery on his left shoulder consisting of arthroscopy with thermal shrinkage of superior labrum, subacromial decompression, rotator cuff repair and distal clavicle excision.

A memorandum from an Office claims examiner dated October 1, 2003 indicates that a proposed schedule award based on a 4 percent permanent impairment of the left upper extremity and a 16 percent impairment of the right upper extremity was postponed because of appellant's September 15, 2003 left shoulder surgery.¹ The proposed award was never issued.

In a January 7, 2004 report, Dr. Jimmy Conway, Jr., an attending physician, indicated that appellant continued to undergo physical therapy and was not expected to attain a state of maximum medical improvement for 8 to 12 weeks. He noted that appellant could return to work with restrictions on January 12, 2004.

In a report dated May 27, 2004, Dr. John W. Ellis, a Board-certified family practitioner specializing in occupational medicine, provided findings on physical examination that included 124 degrees of flexion of appellant's right shoulder, 40 degrees of extension, 25 degrees of adduction, 94 degrees of abduction, 60 degrees of internal rotation and 68 degrees of external rotation. The left shoulder had 116 degrees of flexion, 32 degrees of extension, 20 degrees of adduction, 78 degrees of abduction, 50 degrees of adduction and 50 degrees of abduction. He found that appellant had a 15 percent permanent impairment of the left upper extremity for decreased range of motion, based on Figures 16-38 to 16-46 at pages 474 to 479 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² He determined that appellant had a 21 percent impairment of the right upper extremity, including 12 percent for decreased range of motion, based on Figures 16-38 to 16-46 at pages 474 to 479, and 10 percent for a resection arthroplasty based on Table 16-27 at page 506.³ He indicated that appellant's date of maximum medical improvement was January 8, 2004, because it was approximately the date when "he was released by Dr. Conway."⁴

On June 22, 2004 appellant filed a claim for a schedule award.

¹ In a September 13, 2003 report, Dr. R. Meador, an Office district medical adviser, stated that appellant had a 4 percent impairment of the left upper extremity due to loss of range of motion and a 16 percent impairment of the right upper extremity for loss of range of motion and arthroplasty of the distal clavicle.

² A.M.A., *Guides* (5th ed. 2001).

³ Dr. Ellis failed to include appellant's left shoulder resection arthroplasty on September 15, 2003 in his impairment rating.

⁴ The Board notes that appellant was released to full-time work with restrictions on January 12, 2004.

In a memorandum dated August 5, 2004, Dr. Ronald H. Blum, an Office medical adviser, stated that appellant had a 21 percent combined impairment of the right shoulder due to loss of range of motion and resection arthroplasty of the distal clavicle based on the physical examination findings of Dr. Ellis and the A.M.A., *Guides*. The 21 percent impairment for the right upper extremity included 12 percent for loss of range of motion according to Figures 16-40, 16-43 and 16-46 at pages 476, 477 and 479, respectively and 10 percent for a resection arthroplasty of the distal clavicle according to Table 16-27 at page 506. Dr. Blum stated that appellant had a 23 percent combined impairment of the left shoulder, including 14 percent due to loss of motion based on Figures 16-40, 16-43 and 16-46 at pages 476 to 479 and 10 percent due to resection arthroplasty of the distal clavicle based on Table 16-27 at page 506.⁵ He stated that appellant had previously “received” a 16 percent impairment of the right shoulder from Dr. Meador in his September 13, 2003 report and therefore 16 percent should be subtracted from the 21 percent for the right shoulder, leaving 5 percent additional impairment to be awarded. Dr. Blum stated that appellant had previously “received” 4 percent for loss of motion of the left shoulder based on Dr. Meador’s report and therefore this should be deducted from the 23 percent impairment for the left shoulder, leaving 16 percent additional impairment to be awarded.

On October 22, 2004 an Office claims examiner requested a “295” to determine whether the Office had previously paid a schedule award. There is a notation on the memorandum stating that “295 does not show previous SA.” An Office memorandum dated November 10, 2004 noted that no prior schedule award had been paid.

By decision dated November 10, 2004, the Office granted appellant schedule awards for a 21 percent impairment of the right upper extremity and a 4 percent impairment of the left upper extremity. The date of maximum medical improvement in the schedule award was January 8, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act⁶ and its implementing regulation⁷ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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* been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁸ Effective

⁵ Combining 12 percent and 10 percent equals a 21 percent impairment according to the Combined Values Chart at page 604 of the fifth edition of the A.M.A., *Guides*. Combining 14 percent and 10 percent equals a 23 percent impairment.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.*

February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁹

ANALYSIS

The Board finds that Dr. Blum correctly determined that appellant had a 21 percent impairment of the right shoulder and a 23 percent impairment of the left shoulder due to loss of range of motion and resection arthroplasty of the distal clavicle based on the physical examination findings of Dr. Ellis and the A.M.A., *Guides*. He stated that appellant had a 21 percent impairment of the right shoulder and a 23 percent impairment of the left shoulder including 12 percent for the right shoulder and 14 percent for the left shoulder due to loss of range of motion based on Figures 16-40, 16-43 and 16-46 at pages 476, 477 and 479, respectively and 10 percent for each shoulder due to resection arthroplasty of the distal clavicle according to Table 16-27 at page 506. Dr. Blum indicated that appellant had previously “received” a 16 percent impairment of the right shoulder and 4 percent for the left shoulder and therefore these percentages should be deducted from the 21 percent for the right shoulder and the 23 percent impairment for the left shoulder. However, there is no schedule award of record prior to the Office’s November 10, 2004 decision.¹⁰ In the November 10, 2004 decision, the Office granted appellant a schedule award for 21 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity. On remand of this case the Office should issue an amended schedule award decision granting appellant an additional 19 percent impairment for impairment to his left upper extremity.

CONCLUSION

The Board finds that appellant has 21 percent impairment of the right upper extremity and 23 percent impairment of the left upper extremity. On remand, the Office should issue an amended schedule award decision based on the additional 19 percent impairment of the left upper extremity.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

¹⁰ There are several notations in the record by Office claims examiners, who indicated that appellant had not received any schedule award prior to the November 10, 2004 decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 10, 2004 is affirmed, as modified, and the case is remanded for further action consistent with this decision.

Issued: June 23, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member