



## **FACTUAL HISTORY**

The Office accepted that appellant sustained a right shoulder joint derangement and a nonalopathic cervical lesion in the performance of duty on October 27, 2004.<sup>1</sup> Appellant returned to light-duty work on October 5, 2005.

In a report dated September 7, 2005, Dr. Richard Lane, an osteopath, diagnosed cervical segmental dysfunction and right shoulder internal derangement. He opined that appellant had a 15 percent whole person impairment based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The Office advised Dr. Lane that an impairment rating must be based on the fifth edition of the A.M.A., *Guides* and must rate the impairment to a specified member of the body other than the back or whole person.

In a report dated December 5, 2005, Dr. Lane provided a history and results on examination. He indicated that appellant complained of mild pain in the cervical spine. Dr. Lane opined that appellant had no impairment for the right shoulder and 8 percent to the cervical spine based on a diagnosis-related estimate (DRE) Category II in the fifth edition of the A.M.A., *Guides*.

An Office medical adviser reviewed the medical evidence. In a report dated December 29, 2005, he opined that appellant did not have an impairment to the right upper extremity. The Office medical adviser noted that Dr. Lane did not find an impairment to the right shoulder, nor did he describe radiculopathy that would support an impairment to the upper extremity.

In a decision dated February 9, 2006, the Office determined that appellant was not entitled to a schedule award pursuant to 5 U.S.C. § 8107. The Office found that the medical evidence was not sufficient to establish a permanent impairment to a scheduled member or function of the body.

## **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. The Act, however, 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,

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<sup>1</sup> The initial letter sent to appellant stated that the claim was accepted for right unspecified derangement of joint, shoulder region and cervical region.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.404.

as an appropriate standard for evaluating schedule losses.<sup>4</sup> As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.<sup>5</sup>

Neither the Act nor its regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of “organ” under the Act.<sup>6</sup>

### ANALYSIS

Dr. Lane, an attending osteopath, submitted a report opining that appellant had an eight percent impairment to the cervical spine pursuant to the A.M.A., *Guides*. He referred to a DRE provided in the A.M.A., *Guides* for the cervical spine. Under Table 15-5, a DRE Category II impairment is a five to eight percent impairment to the whole person based on cervical problems localized to the cervical or cervicothoracic region.<sup>7</sup> As noted above, the back is not a member of the body under section 8107, nor is a whole person impairment appropriate for a schedule award under the Act.

With respect to the right upper extremity, Dr. Lane did not report that appellant sustained any ratable permanent impairment. Moreover, the medical adviser opined that the medical evidence did not establish a right arm impairment under the provisions of the A.M.A., *Guides*. He noted, for example, that Dr. Lane did not discuss radiculopathy or provide a description of any impairment to the upper extremities.<sup>8</sup> Since the probative medical evidence of record does not establish a permanent impairment to the right upper extremity or other member of the body covered under the Act, the Board finds that the Office properly determined that appellant was not entitled to a schedule award in this case.

### CONCLUSION

The medical evidence does not establish that appellant is entitled to a schedule award pursuant to 5 U.S.C. § 8107.

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<sup>4</sup> *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).

<sup>6</sup> See *James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20); *Janae J. Triplette*, 54 ECAB 792 (2003).

<sup>7</sup> A.M.A., *Guides* 392, Table 15-5.

<sup>8</sup> To support a schedule award, the attending physician must include a detailed description of the impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 9, 2006 is affirmed.

Issued: November 13, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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