



In an attending physician's report dated October 11, 2004, Dr. Ramon H. Bagby, a Board-certified orthopedic surgeon, diagnosed deltoid tendinitis and rotator cuff tear of the right shoulder. He stated that he had performed acromioplasty with repair of the rotator cuff. On November 1, 2004 the Office informed appellant that her claim for a schedule award could not be processed because she had not submitted evidence that she had reached maximum medical improvement. The Office requested a "final report" from her treating physician, including a conclusion that her condition was permanent and stationary.

Appellant submitted an October 11, 2004 report from Dr. Bagby entitled "State of California -- Division of Workers' Compensation Primary Treating Physician's Permanent and Stationary Report." Dr. Bagby provided diagnoses of tendinitis of the right shoulder and rotator cuff tear due to repetitive arm motion duties at work. On physical examination, he found full range of motion of the right shoulder; moderate edema of the right arm; and occasional numbness and tingling. Dr. Bagby also found that appellant's right shoulder was "very painful." He noted that, when raising her right arm, appellant had frequent moderate pain and that she had occasional moderate swelling. Dr. Bagby referred to a February 2, 2002 magnetic resonance imaging scan, which showed partial tearing and degeneration of the right shoulder. He opined that the date of maximum medical improvement (MMI) was October 11, 2004. An assessment of appellant's permanent impairment of the right upper extremity was not provided.

In a memorandum dated January 30, 2006, the Office asked the district medical adviser to review the case record in order to determine the degree of permanent functional loss of use of appellant's right upper extremity, as well as the date of MMI. In a report dated February 8, 2006, the medical adviser stated that he had reviewed appellant's file. Indicating that he had used Dr. Bagby's October 11, 2004 report as the basis for his determination, he opined that, pursuant to the fifth edition of the A.M.A., *Guides*, appellant had a five percent permanent impairment of her right upper extremity. The medical adviser noted that appellant's accepted conditions were right shoulder strain, tendinitis with rotator cuff repair and acromioplasty. He concluded that appellant had no ratable impairment due to loss of range of motion. In evaluating impairment due to loss of strength and impairment due to sensory deficit or pain, the medical adviser referred to Tables 16-10 and 16-11, pages 482 and 484.<sup>1</sup> He rated the level of symptoms as Grade 4 for loss of strength and sensory deficit or pain, and allowed the maximum of 25 percent for both sensory and motor deficit. Noting that the maximum combined impairment based on the suprascapular nerve is 20 percent (pursuant to Table 16-15, page 492), he concluded that appellant had a 5 percent impairment of the right upper extremity (25 percent x 20 percent = 5 percent). The medical adviser opined that the date of MMI was October 11, 2004.

By decision dated February 15, 2006, the Office granted appellant a schedule award for a five percent loss of use of the right upper extremity for a total of 15.6 weeks, to run from October 11, 2004 through January 28, 2005. The Office further found that the date of MMI was October 11, 2004.

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<sup>1</sup> See Table 16-10, page 482, "Determining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting From Peripheral Nerve Disorders." See also Table 16-11, page 484, "Determining Impairment of the Upper Extremity Due to Motor and Loss-of-Power Deficits Resulting From Peripheral Nerve Disorders Based on Individual Muscle Ratings."

## LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> sets 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. The Act, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of the Office.<sup>4</sup> 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>5</sup>

The Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>6</sup>

It is well established that the period covered by the schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.<sup>7</sup> The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician, which is accepted as definitive by the Office.<sup>8</sup>

## ANALYSIS

In his October 11, 2004 report, Dr. Bagby found full range of motion of the right shoulder; moderate edema of the right arm; and occasional numbness and tingling. He also

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Linda R. Sherman*, 56 ECAB \_\_\_\_ (Docket No. 04-1510, issued October 14, 2004); *Daniel C. Goings*, 37 ECAB 781, 783-84 (1986).

<sup>5</sup> *Ronald R. Kraynak*, 53 ECAB 130, 132 (2001).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

<sup>7</sup> *Mark A. Holloway*, 55 ECAB \_\_\_\_ (Docket No. 03-2144, issued February 13, 2004). See also *James E. Earle*, 51 ECAB 567 (2000).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a) (June 2003). See *Richard Larry Enders*, 48 ECAB 184 (1996).

found that appellant's right shoulder was "very painful." Dr. Bagby noted that when raising her right arm, appellant had frequent moderate pain, and that she had occasional moderate swelling. He opined that the date of MMI was October 11, 2004. An assessment of appellant's permanent impairment of the right upper extremity was not provided. The Office medical adviser reviewed Dr. Bagby's report and the case record in order to determine the degree of permanent functional loss of use of appellant's right upper extremity, as well as the date of MMI. In a report dated February 8, 2006, the medical adviser applied the appropriate tables of the A.M.A., *Guides* to determine that appellant had a five percent permanent impairment of her right upper extremity. Using Dr. Bagby's findings as the basis of his report, the medical adviser concluded that appellant had no ratable impairment due to loss of range of motion. In evaluating impairment due to loss of strength and impairment due to sensory deficit or pain, the medical adviser referred to Tables 16-10 and 16-11, pages 482 and 484.<sup>9</sup> He rated the level of symptoms as Grade 4 for loss of strength and sensory deficit or pain, and allowed the maximum of 25 percent for both sensory and motor deficit. Noting that the maximum combined impairment based on the suprascapular nerve is 20 percent (pursuant to Table 16-15, page 492), he concluded that appellant had a 5 percent impairment of the right upper extremity (25 percent x 20 percent = 5 percent). The Office medical adviser opined that the date of MMI was October 11, 2004.

There is no other medical evidence of record conforming to the A.M.A., *Guides* that supports any greater impairment. The Board finds that the Office properly concluded that appellant has no more than a five percent impairment of her right upper extremity.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained more than a five percent impairment of her right upper extremity.

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<sup>9</sup> See Table 16-10, page 482, "Determining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting From Peripheral Nerve Disorders." See also Table 16-11, page 484, "Determining Impairment of the Upper Extremity Due to Motor and Loss-of-Power Deficits Resulting From Peripheral Nerve Disorders Based on Individual Muscle Ratings."

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 15, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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