

Office accepted appellant's claim for a left shoulder rotator cuff tear. On April 21, 2005 appellant filed a claim for a schedule award.

By decision dated August 2, 2005, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he had any permanent impairment causally related to his accepted left shoulder rotator cuff tear.

Appellant requested reconsideration and submitted additional evidence.

In an October 27, 2005 report, Dr. Emmanuel E. Jacob, a Board-certified physiatrist, provided findings on physical examination. He found that appellant had a 7 percent impairment of the left upper extremity for motor deficit, based on Tables 16-11 and 16-13 at pages 484 and 489 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*¹ and 3.2 percent for a Grade 3 deficit of the C6 sensory root.² Dr. Jacob stated that appellant had a nine percent impairment of the whole person for Class 1 sexual function, based on Table 13-21 at page 342, and a three percent impairment of the whole person for pain, based on section 18.3d at page 573. He indicated that appellant had a 19 percent total impairment of the whole person.

In a March 30, 2006 memorandum, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and an Office medical adviser, stated that appellant's impairment rating should be based on the primary pathology and accepted condition of left rotator cuff surgery with acromioplasty. He stated that appellant had a 10 percent impairment of the left upper extremity for an arthroscopic distal clavicle resection based on Table 16-27 at page 506 of the fifth edition of the A.M.A., *Guides*.³

By decision dated April 24, 2006, the Office granted appellant a schedule award for the period October 7, 2005 to May 13, 2006 based on a 10 percent impairment of the left upper extremity.⁴

¹ A.M.A., *Guides* (5th ed. 2001).

² Dr. Jacob did not indicate the section of the A.M.A., *Guides* he used in determining the C6 root impairment.

³ Dr. Berman indicated that an impairment rating based on loss of range of motion would yield only an 8 percent impairment based on Dr. Jacob's measurement of 110 degrees of flexion (5 percent), 45 degrees of extension (1 percent) and 130 degrees of abduction (2 percent), based on Figure 16-40 at page 476 of the A.M.A., *Guides* and Figure 16-43 at page 477.

⁴ The Board notes that the Office's April 24, 2006 decision does not indicate the correct number of weeks of compensation due for a 10 percent impairment of the upper extremity. The Act provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity. 5 U.S.C. § 8107(c)(1). Ten percent times 312 weeks equals 31.20 weeks. The Office indicated in its decision that 218.40 weeks was payable.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act⁵ and its implementing regulation⁶ 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. 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*⁷ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁸

ANALYSIS

Appellant sustained a left shoulder rotator cuff tear in the performance of duty and subsequently filed a claim for a schedule award for permanent impairment.

Dr. Berman found that that appellant had a 10 percent impairment of the left upper extremity based on Table 16-27 at page 506 of the fifth edition of the A.M.A., *Guides*. He indicated that he had to choose between impairment based on loss of range of motion and impairment based on arthroplasty, whichever rating yielded the highest percentage of impairment. In this case, 8 percent for range of motion as compared to 10 percent for arthroplasty. However, the A.M.A., *Guides* provides that range of motion impairment under section 16.4, can be combined with arthroplasty impairment in section 16.7b.⁹

Dr. Jacob found that appellant had a 7 percent impairment of the left upper extremity for motor deficit, based on Tables 16-11 and 16-13 at pages 484 and 489 of the A.M.A., *Guides* and 3.2 percent for a Grade 3 deficit of the C6 sensory root. He stated that appellant had a nine percent impairment of the whole person for Class 1 sexual function, based on Table 13-21 at page 342 and a three percent impairment of the whole person for pain, based on section 18.3d at page 573. Dr. Jacob indicated that appellant had a 19 percent total impairment of the whole person. There are several deficiencies in Dr. Jacob's impairment rating. He did not indicate, with reference to the A.M.A., *Guides*, how he calculated the 3.2 percent impairment for the C6 nerve root. Additionally, while the A.M.A., *Guides* provides for impairment to the individual member and to the whole person, the Act does not provide for permanent impairment for the whole person.¹⁰ A schedule award is not payable for the loss or loss of use of any member of the body or function that is not specifically enumerated in section 8107 of the Act or its

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁸ 20 C.F.R. § 10.404.

⁹ A.M.A., *Guides* 505, section 16.7b, "Arthroplasty."

¹⁰ *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *John Yera*, 48 ECAB 243 (1996).

implementing regulations.¹¹ Therefore, appellant is not entitled to a schedule award for the whole body based on his accepted left shoulder condition. Regarding impairment for pain, section 18.3b of Chapter 18 at page 571 of the A.M.A., *Guides* provides that “Examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the [A.M.A.] *Guides*.” Dr. Jacob did not explain why appellant’s pain-related impairment could not be adequately addressed by applying Chapter 16 of the A.M.A., *Guides* which addresses upper extremity impairment. He did not explain why application of Chapter 16 was not adequate to calculate appellant’s impairment due to upper extremity pain, justifying application of Chapter 18 of the A.M.A., *Guides*. Regarding impairment due to loss of sexual function, Dr. Jacob did not explain how any impairment for loss of sexual function was due to the accepted left shoulder condition.¹² Due to these deficiencies, Dr. Jacob’s impairment rating cannot be used to calculate appellant’s schedule award for his accepted left upper extremity condition.

CONCLUSION

The Board finds that the case is not in posture for decision. On remand, the Office should develop the issue of appellant’s left upper extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated April 24, 2006 is set aside and the case is remanded for further action consistent with this decision.

Issued: November 9, 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

¹¹ *Leroy M. Terska*, 53 ECAB 247 (2001).

¹² *See* 20 C.F.R. § 10.404(a); *Wade Baker*, 54 ECAB 198 (2002).