

the right shoulder: 70 degrees flexion, 40 degrees extension, 70 degrees abduction, 30 degrees adduction, 60 degrees of internal rotation and 0 degrees external rotation. Dr. Shanks stated that strength testing showed significant weakness in the right upper extremity, noting a “low [G]rade 4 level” for flexion, abduction, internal and external rotation, with extension above Grade 4 and adduction at Grade 4. With respect to the degree of permanent impairment, Dr. Shanks indicated that appellant had a 21 percent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed.). This rating consisted of seven percent for loss of flexion, five percent loss of abduction, five percent for loss of external rotation, two percent for loss of internal rotation and one percent each for loss of extension and adduction. Dr. Shanks also opined that, under Table 16-35, appellant had a 15 percent impairment for weakness in the right shoulder, resulting in a combined 33 percent right upper extremity impairment.

An Office medical adviser reviewed the evidence in an April 11, 2006 report. The medical adviser found that Dr. Shanks had awarded five percent for loss of external rotation based on zero degrees, whereas the A.M.A., *Guides* provided a two percent impairment. Accordingly, the medical adviser found that appellant had an 18 percent right arm impairment based on loss of range of motion. In addition, the medical adviser opined that an additional impairment based on muscle strength testing was inappropriate under the A.M.A., *Guides*, as it can be combined with loss of motion only if based on unrelated etiologic or pathomechanical causes. The medical adviser concluded that appellant had an 18 percent permanent impairment of his right arm and the date of maximum medical improvement was September 15, 2005.

By decision dated April 17, 2006, the Office issued a schedule award for an 18 percent right arm impairment. The award ran for 56.16 weeks from September 15, 2005.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees’ Compensation Act¹ and section 10.404 of the implementing federal regulations,² 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, as an appropriate standard for evaluating schedule losses.³

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404.

³ *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

ANALYSIS

The attending physician, Dr. Shanks, provided an opinion that appellant had a 33 percent right arm impairment, based on 21 percent for loss of range of motion in the right shoulder and 15 percent for strength deficit based on manual muscle testing. As to loss of range of motion for the shoulder, the A.M.A., *Guides* provides Figures 16-40, 16-43 and 16-46 to calculate the degree of impairment based on examination results. Under Figure 16-40, 70 degrees of flexion is a 7 percent arm impairment and 40 degrees of extension is a 1 percent impairment.⁴ For shoulder abduction, 70 degrees is a 5 percent impairment and 30 degrees of adduction is a 1 percent impairment pursuant to Figure 16-43.⁵ Dr. Shanks reported 60 degrees of internal rotation, which is a 2 percent arm impairment and 0 degrees of external rotation, which the medical adviser correctly pointed out also results in a 2 percent impairment under Figure 16-46.⁶ The attending physician had incorrectly found that zero degrees of external rotation was a five percent impairment. Adding the individual impairments of 7, 1, 5, 1, 2 and 2 results in an 18 percent impairment for loss of range of motion in the shoulder.

Dr. Shanks added an additional impairment under Table 16-35, which is used to estimate impairment for strength deficit based on manual muscle testing. The A.M.A., *Guides*, however, state that the use of such a table would be appropriate in “a rare case” where the “loss of strength represents an impairing factor that has not been considered adequately by other methods.”⁷ According to the A.M.A., *Guides*, the impairment due to loss of strength could be combined with other impairments “only if based on unrelated etiologic or pathomechanical causes” and decreased strength cannot be rated in the presence of decreased motion that prevents effective application of maximal force in the evaluated region.⁸ The medical adviser noted these provisions and provided a reasoned opinion that it would not be appropriate to use Table 16-35 in this case. Dr. Shanks did not acknowledge the provisions of the A.M.A., *Guides* or provide any additional explanation as to why Table 16-35 would be proper under these circumstances.

Accordingly, the Board finds that the weight of the evidence is represented by the Office medical adviser. The probative medical evidence of record does not establish more than an 18 percent right arm impairment, for which appellant received a schedule award.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant’s impairment was 18 percent, he is entitled to 18 percent of 312 weeks or 56.16 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the

⁴ A.M.A., *Guides* 476, Figure 16-40.

⁵ *Id.* at 477, Figure 16-43.

⁶ *Id.* at 479, Figure 16-46.

⁷ *Id.* at 508.

⁸ *Id.*

employment injury.⁹ In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Shanks. The award, therefore, properly runs for 56.16 weeks commencing on September 15, 2005.

CONCLUSION

Appellant has not established more than an 18 percent permanent impairment to his right arm.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 17, 2006 is affirmed.

Issued: October 10, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁹ *Albert Valverde*, 36 ECAB 233, 237 (1984).