

decompression of the left shoulder, distal clavicle excision and mini-open rotator cuff repair of the left shoulder.

In a report dated October 25, 2004, Dr. Rubens stated that appellant had reached maximum medical improvement. He provided the range of motion of appellant's left shoulder as external rotation of 85 degrees, internal rotation of 75 degrees, abduction of 175, and adduction of 45 degrees. Dr. Rubens noted that appellant had 175 degrees of flexion and 15 degrees of extension. He stated that appellant's rotator cuff and supraspinatus strengths were 4/5. However, Dr. Rubens stated, "I believe that her strength will continue to improve with time. Her range of motion may improve somewhat...."

Appellant requested a schedule award on December 3, 2004. The Office referred appellant for a second opinion evaluation with Dr. Thomas Connolly, a Board-certified orthopedic surgeon, on January 10, 2005. In a February 22, 2005 report, Dr. Connolly found that appellant had 80 degrees of internal rotation, 180 degrees of forward flexion, 50 degrees of extension, 170 degrees of abduction and 70 degrees of external rotation. He provided a supplemental report noting that in accordance with the provisions of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ 160 degrees of abduction was 1 percent impairment and 50 degrees of external rotation was also 1 percent impairment of the upper extremity. Dr. Connolly stated that appellant reached maximum medical improvement on February 1, 2005.

The Office medical adviser reviewed Dr. Connolly's report on March 4, 2005 and concurred with the impairment rating. On March 28, 2005 the Office granted appellant a schedule award for two percent impairment of her left upper extremity.

Appellant disagreed with this decision and requested reconsideration on April 5, 2005. In a report dated March 29, 2005, Dr. Rubens stated that his current impairment rating was based on the October 25, 2004 examination of appellant. He found that appellant had one percent impairment due to loss of range of motion and three percent impairment due to loss of strength in the supraspinatus and infraspinatus muscles for four percent impairment of the left upper extremity. Dr. Rubens provided citations to the A.M.A., *Guides* in support of his impairment rating.

The Office medical adviser reviewed Dr. Rubens' March 29, 2005 report and found that it was not appropriate for a permanent impairment rating. Although Dr. Rubens had opined that appellant had reached maximum medical improvement, he also suggested that both her strength and range of motion deficits would improve over time.

By decision dated June 15, 2005, the Office denied modification of its March 28, 2005 schedule award decision.

Appellant requested reconsideration on November 18, 2005 and submitted a report dated November 9, 2005 from Dr. Kirk S. Hutton, a Board-certified orthopedic surgeon, who provided a history of injury and opined that appellant had reached maximum medical improvement. He

¹ A.M.A., *Guides* (5th ed. 2000).

found that appellant had significant shoulder pain, but some tenderness over the coracoid process and some weakness. Dr. Hutton stated that appellant had bilateral forward flexion to 180 degrees, external rotation to 60 degrees, and internal rotation to 80 degrees. He provided additional range of motion figures for appellant's right arm, noting weakness in the right arm only. Dr. Hutton concluded that appellant had 14 percent permanent impairment of her left upper extremity.

The Office medical adviser reviewed this report on December 17, 2005 and noted that Dr. Hutton failed to provide any explanation of how he reached his impairment rating of 14 percent and failed to correlate his findings with the A.M.A., *Guides*.

By decision dated December 29, 2005, the Office again denied modification of its March 28, 2005 schedule award decision.

Appellant requested reconsideration on January 30, 2006 and submitted a report from Dr. Hutton dated November 9, 2005. Dr. Hutton provided a listing of the tables and figures of the A.M.A., *Guides* used to reach his impairment rating, including Table 16-27, *Impairment of the Upper Extremity After Arthroplasty of Specific Bones or Joints*² but did not describe how he utilized the tables to make his impairment rating.

On March 10, 2006 the Office medical adviser noted that in the report of November 9, 2005 Dr. Hutton stated that appellant had undergone a distal clavicle excision. The Office medical adviser noted that appellant's March 24, 2004 operative report confirmed the distal clavicle excision, a 10 percent impairment in accordance with the A.M.A., *Guides*. However, he found that appellant was not entitled to any additional impairment rating due to loss of range of motion for which she had already received a schedule award. The Office medical adviser concluded that, as appellant had already received a schedule award for two percent impairment of the left upper extremity, she was only entitled to an additional schedule award for the remaining eight percent impairment.

By decisions dated March 16, 2006, the Office modified its prior decisions and granted appellant a schedule award for an additional eight percent impairment of her left upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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

² A.M.A., *Guides* 506, Table 16-27.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

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.

The A.M.A., *Guides* provide that impairment is considered permanent when it has reached maximal medical improvement, meaning it is well stabilized and unlikely to change substantially in the next year with or without medical treatment.⁵ 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.⁶

ANALYSIS

Appellant sustained injury to her left shoulder in the performance of duty. Based on the report of Dr. Connolly, a Board-certified orthopedic surgeon, and second opinion physician, the Office granted appellant a schedule award for two percent impairment of her left upper extremity due to loss of range of motion.

Appellant disagreed with this assessment and submitted additional new evidence. The Board finds that the Office properly refused to consider the March 29, 2005 report of Dr. Rubens as probative as it was based on the findings of a physical examination which occurred prior to the date upon which appellant reached maximum medical improvement. As noted by the Office medical adviser, in the October 24, 2004 report upon which Dr. Rubens based his March 29, 2005 impairment rating, he stated that appellant's range of motion and strength would continue to improve. This statement does not comport with his conclusion on October 24, 2004 that appellant had reached maximum medical improvement. As Dr. Rubens opined that appellant's condition would continue to improve, her left shoulder condition had not stabilized and did not meet the criteria for maximum medical improvement as defined by the Board and the A.M.A., *Guides*.⁷ Therefore at the time of the October 24, 2004 examination appellant's condition was not ripe for evaluation in accordance with the standards of the A.M.A., *Guides* and she was not entitled to permanent impairment rating or schedule award based on these findings.

In regard to the reports from Dr. Hutton, the Board notes that he did not correlate his limited findings regarding appellant's range of motion of the left shoulder with the A.M.A., *Guides*. Forward flexion of the left shoulder of 180 degrees is considered normal under the A.M.A., *Guides* and therefore not a ratable impairment.⁸ Likewise external rotation of 60 degrees is not a ratable impairment⁹ nor is internal rotation of 80 degrees.¹⁰

⁵ A.M.A., *Guides* 2.

⁶ *James E. Earle*, 51 ECAB 567, 569 (2000).

⁷ A.M.A., *Guides* 2. *Earle*, *id.*

⁸ *Id.* at 476, Figure 16-40.

⁹ *Id.* at 479, Figure 16-46.

¹⁰ *Id.* The Board notes that the remainder of the range of motion figures mentioned in Dr. Hutton's report address appellant's right upper extremity, not in question at this time for schedule award purposes.

In the report of November 9, 2005, Dr. Hutton provided a citation to Table 16-27 of the A.M.A., *Guides* which provides an impairment rating for arthroplasty of specific bones or joints. The Office medical adviser then properly concluded that appellant was entitled to 10 percent impairment of her left upper extremity due to the arthroplasty of the distal clavicle. He subtracted the two percent impairment rating she had already received from this amount and accorded appellant an additional schedule award of eight percent. However, the Board notes that the A.M.A., *Guides* provide: “In the present of *decreased motion*, motion impairments are derived separately and *combined* with the arthroplasty impairment.”¹¹ Appellant is entitled to the combined value of her impairment for arthroplasty and loss of range of motion utilizing the Combined Values Chart. The Board finds that appellant has 11 percent impairment of her left upper extremity.

CONCLUSION

The Board finds that appellant is entitled to an additional one percent schedule award for a total of 11 percent permanent impairment of her left upper extremity based on the combined values of her loss of range of motion and her arthroplasty.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2006, December 29 and June 15, 2005 decisions of the Office are affirmed, as modified.

Issued: September 18, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹¹ A.M.A., *Guides* 604.