

By decision dated June 6, 2006, 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 right shoulder condition.

In a report dated September 5, 2006, Dr. Michael J. Platto, a Board-certified physiatrist, provided findings on physical examination. He found a 3 percent impairment for abduction of 111 degrees and a 2 percent impairment for adduction 111 degrees according to Figure 16-43, page 477; a 7 percent impairment for flexion of 82 degrees, a 0 percent impairment for extension of 67 degrees using Figure 16-40, page 476; and 2 percent impairment for 64 degrees internal rotation and 0 percent for 82 degrees external rotation using Figure 16-46, page 479. Dr. Platto added these loss of range of motion impairments to find a total 14 percent impairment for the right upper extremity. He opined that appellant had an additional 24¹ percent impairment of the right upper extremity for right shoulder arthroplasty implant according to Table 16-27, page 506.² Dr. Platto then used the Combined Values Chart to determine that a 14 percent impairment for loss of motion and a 24 percent impairment for right shoulder implant arthroplasty resulted in a 34 percent impairment of the right upper extremity.³

On September 21, 2006 the Office referred the medical record to an Office medical adviser for review. In a September 21, 2006 report, the Office medical adviser reviewed the medical record and opined that appellant had reached maximum medical improvement as of September 5, 2006. Referring to the fifth edition of the A.M.A., *Guides*, the Office medical adviser found a seven percent impairment of the left shoulder for diminished flexion according to Figure 16-40, page 476, three percent impairment for limited abduction according to Figure 16-43, page 477, a two percent impairment for limited adduction according to Figure 16-43, page 477 and a two percent impairment for diminished internal rotation according to Figure 16-46, page 479. The medical adviser added these impairments to total 14 percent upper extremity impairment for loss of motion. He opined that appellant had an additional 20 percent impairment of the right upper extremity for a hemiarthroplasty implant according to Table 16-27, page 506. The medical adviser then used the Combined Values Chart to determine that a 14 percent impairment for loss of motion and 20 percent impairment for hemiarthroplasty implant resulted in a 31 percent impairment of the right upper extremity.

By decision dated September 27, 2006, the Office granted appellant a schedule award the period September 5, 2006 to July 13, 2008 based on a 31 percent impairment of the right upper extremity.

¹ Dr. Platto included an additional 20 percent impairment in his report. However, this appears to be a typographical error as Dr. Platto used 24 percent when using the Combined Values Chart.

² Table 16-27, page 506 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) is entitled Impairment of the Upper Extremity After Arthroplasty of Specific Bones or Joints. According to Table 16-27, total implant arthroplasty of the shoulder equals a 24 percent impairment of the upper extremity.

³ The Board notes combining 24 and 14 pursuant to the Combined Values Chart results in a 35 percent impairment of the right upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing federal regulation,⁵ set 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 for all claimants, the Office has adopted the A.M.A., *Guides* (5th ed. 2001) as the uniform standard applicable to all claimants.⁶ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

ANALYSIS

The Office accepted that, on June 13, 1998, appellant sustained injury to the right shoulder bursae and tendons requiring right shoulder reconstruction surgery.

The Office found that appellant had a 31 percent impairment of the right upper extremity based on the Office medical adviser's September 21, 2006 report. Both Dr. Platto and the Office medical adviser found a 14 percent impairment for loss of motion in the right upper extremity using 3 percent impairment for loss of abduction and a 2 percent impairment for loss of adduction according to Figure 16-43, page 477, a 7 percent impairment for loss of flexion using Figure 16-40, page 476 and 2 percent impairment for internal rotation loss using Figure 16-46, page 479. They both added these impairments to equal 14 percent impairment for the right upper extremity. Regarding the use of Table 16-27 for right shoulder arthroplasty implant, Dr. Platto and the Office medical adviser agreed that appellant had 20 percent impairment. However, in using the Combined Values Chart to determine appellant's total impairment, Dr. Platto used a 24 percent impairment for right shoulder implant arthroplasty, the maximum allowable at Table 16-27. This totals a 35 percent impairment of the right upper extremity when combining the 14 percent impairment for loss of motion with the 24 percent for right shoulder implant arthroplasty. The Office medical adviser used the Combined Values Chart to determine that 14 percent impairment for loss of motion and 20 percent impairment for arthroplasty implant resulted in a 31 percent impairment of the right upper extremity.

Both Dr. Platto and the Office medical adviser concluded that appellant had a 14 percent impairment of the right upper extremity based upon range of motion loss. However, the Office medical adviser rated appellant at 20 percent impairment for his March 22, 2005 arthroplasty in accordance with Table 16-27 of the A.M.A., *Guides* fifth edition, without explanation as to why he reduced the percentage of impairment allowed by the attending physician. In this regard, Dr. Platto had assigned a 24 percent impairment for arthroplasty in calculating appellant's right

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404

⁶ *Id.* at § 10.404(a).

⁷ *Id.* See *Thomas P. Lavin*, 57 ECAB ____ (Docket No. 05-1229, issued February 3, 2006); *Jesse Mendoza*, 54 ECAB 802 (2003).

upper extremity impairment. The Board notes that Table 16-27 provides a 30 percent impairment for “Total Shoulder Resection Arthroplasty and a 24 percent impairment for “Total Shoulder Implant Arthroplasty. The record is unclear whether the 20 percent impairment awarded by the Office medical adviser is a typographical error or a miscalculation on his part. Moreover, as Table 16-27 defines “resection” as a surgical replacement, it is possible the Office medical adviser might have intended a 30 percent impairment for the arthroplasty. As it is unclear how the Office medical adviser’s report arrived at the 20 percent impairment rating, the case must be remanded for the Office medical adviser to explain his impairment rating for appellant’s right hemiarthroplasty implant. Following this and such necessary further development, the Office shall issue a *de novo* decision regarding the percentage of impairment of appellant’s right upper extremity.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated September 27, 2006 is set aside and the case is remanded for further proceedings consistent with the above opinion.

Issued: April 5, 2007
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