

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.A., Appellant** )  
)  
**and** ) **Docket No. 07-840**  
) **Issued: July 18, 2007**  
)  
**DEPARTMENT OF THE NAVY, PUGET** )  
**SOUND NAVAL SHIPYARD, Bremerton, WA,** )  
**Employer** )

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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 6, 2007 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 5, 2006 and a hearing representative's decision dated November 13, 2006 denying his claim for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

**ISSUE**

The issue is whether appellant has more than a 15 percent permanent impairment of the right upper extremity for which he received schedule awards.

**FACTUAL HISTORY**

On September 22, 2003 appellant, then a 64-year-old retired boilermaker, filed an occupational disease claim alleging that he sustained an injury to his right shoulder on March 9,

2004 when his right knee gave way and he fell. The Office accepted his consequential injury claim for a right shoulder strain and a rotator cuff tear.<sup>1</sup>

By decision dated November 3, 2004, the Office granted appellant a schedule award for a 10 percent permanent impairment of the right upper extremity. On December 10, 2004 appellant requested reconsideration. In a decision dated December 23, 2004, the Office denied merit review of its November 3, 2004 decision.

On February 25, 2005 appellant filed a claim for an increased schedule award. He submitted an impairment evaluation dated April 6, 2005 from Dr. Timothy M. Gilmore, Board-certified in occupational medicine. He found wasting of the right shoulder as compared to the left and tenderness to palpation of the shoulder girdle. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), Dr. Gilmore determined that 70 degrees flexion of the right shoulder yielded a 7 percent impairment,<sup>2</sup> 40 degrees extension yielded a 1 percent impairment,<sup>3</sup> 80 degrees abduction yielded a 5 percent impairment,<sup>4</sup> 50 degrees adduction yielded no impairment,<sup>5</sup> 50 degrees internal rotation yielded a 2 percent impairment<sup>6</sup> and 70 degrees external rotation yielded no impairment.<sup>7</sup> He added the impairments due to loss of range of motion and concluded that appellant had a 15 percent permanent impairment of the right upper extremity. On May 2, 2005 an Office medical adviser reviewed Dr. Gilmore's report and concurred with his findings.

In a decision dated July 12, 2005, the Office granted appellant a schedule award for an additional five percent impairment of the right upper extremity. The period of the award ran for 15.6 weeks from April 6 to July 24, 2005.

By letter dated November 8, 2005, the Office requested a report from appellant's attending physician addressing the extent of his permanent impairment under the A.M.A., *Guides*. In a report dated February 3, 2006, Dr. Mark F. Craddock, Board-certified in family practice, listed range of motion findings for the right shoulder of 65 degrees flexion, 10 degrees extension, 20 degrees external rotation, 5 degrees internal rotation, 50 degrees abduction and 10 degrees adduction. Dr. Craddock determined that appellant had a 35 percent impairment due to loss of flexion and extension, a 36 percent impairment due to loss of external and internal rotation and a 25 percent impairment due to loss of abduction and adduction, which he added to find a total right upper extremity impairment of 82 percent.

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<sup>1</sup> The Office previously accepted that appellant sustained an employment-related right knee strain and post-traumatic arthritis.

<sup>2</sup> A.M.A., *Guides* 476, Figure 16-40.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 477, Figure 16-43.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 479, Figure 16-46.

<sup>7</sup> *Id.*

An Office medical adviser reviewed Dr. Craddock's report and noted that appellant had experienced a "marked reduction" in range of motion of the right shoulder in less than one year. She recommended an evaluation by a referral physician to confirm and explain the decrease in range of motion.

On March 16, 2006 the Office referred appellant to Dr. Edward D. Arrington, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated March 29, 2006, Dr. Arrington measured range of motion for the right shoulder and applied the A.M.A., *Guides* to his findings. He determined that 90 degrees forward flexion yielded a 6 percent impairment,<sup>8</sup> 40 degrees extension yielded a 1 percent impairment,<sup>9</sup> 90 degrees abduction yielded a 4 percent impairment,<sup>10</sup> 40 degrees adduction yielded no impairment,<sup>11</sup> 70 degrees internal rotation yielded a 1 percent impairment<sup>12</sup> and 60 degrees external rotation yielded no impairment.<sup>13</sup> Dr. Arrington obtained the range of motion values two separate times and "with distraction." He noted appellant's complaints of pain with range of motion of the right shoulder and found tenderness over the acromioclavicular joint, subacromial space and biceps tendon. Dr. Arrington found full range of motion of the elbows and wrists and no muscle spasms, swelling, ecchymosis or erythema. He further found no loss of sensation and strength of 5/5. Dr. Arrington added the losses in range of motion and concluded that appellant had a 12 percent permanent impairment of the right upper extremity.

On June 5, 2006 an Office medical adviser reviewed Dr. Arrington's report and concurred with his findings. By decision dated July 5, 2006, the Office denied appellant's claim for an increased schedule award, finding that the medical evidence did not show that he had a greater permanent impairment than previously awarded.

On July 13, 2006 Dr. Craddock indicated that he applied the A.M.A., *Guides* in reaching his determination and reaffirmed his prior rating. He submitted a February 22, 2006 corrected copy of his February 3, 2006 report. Dr. Craddock reapplied the A.M.A., *Guides* to his range of motion measurements. He stated:

"Examination of his right shoulder revealed that his flexion was 65 degrees and extension 10 degrees. This would give him an eight percent impairment for flexion and a two percent impairment for extension. His internal rotation as 5 degrees and his external rotation 20 degrees. This would give him a five percent impairment for internal rotation and a seven percent impairment for external rotation. His abduction was to 50 degrees which would give him a 6 percent impairment for that and adduction was 10 degrees which would give

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<sup>8</sup> *Id.* at 476, Figure 16-40.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 477, Figure 16-43.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 479, Figure 16-46.

<sup>13</sup> *Id.*

him a 1 percent impairment for that. Total would be approximately [a] 30 percent impairment of the right upper extremity which is in marked contrast to my previous dictation which said an 82 percent impairment.”

On July 18, 2006 appellant requested a review of the written record. By decision dated November 13, 2006, an Office hearing representative affirmed the July 5, 2006 decision. She found that Dr. Craddock provided no rationale in support of his decreased range of motion values.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>14</sup> and its implementing federal regulation,<sup>15</sup> 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* (5<sup>th</sup> ed. 2001) as the uniform standard applicable to all claimants.<sup>16</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>17</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a right shoulder strain and a right rotator cuff tear as a consequence of his employment-related right knee condition. By decision dated November 3, 2004, the Office granted him a schedule award for a 10 percent impairment of the right upper extremity. On December 10, 2004 appellant requested an additional schedule award and, in a decision dated May 2, 2005, the Office granted him an award for an additional five percent impairment of the right upper extremity. The Office based the schedule award on the April 6, 2005 range of motion measurements of Dr. Gilmore, appellant’s attending physician. For the right shoulder Dr. Gilmore found that appellant had 70 degrees flexion, 40 degrees extension, 80 degrees abduction, 50 degrees adduction, 50 degrees internal rotation and 70 degrees external rotation.

On November 9, 2005 the Office requested a report from appellant’s attending physician addressing the extent of his permanent impairment under the A.M.A., *Guides*. He submitted a report dated February 3, 2006 from Dr. Craddock, who listed range of motion findings for the right shoulder of 65 degrees flexion, 10 degrees extension, 20 degrees external rotation, 5 degrees internal rotation, 50 degrees abduction and 10 degrees adduction. He added the impairment findings due to loss of range of motion and concluded that appellant had an 82 percent permanent impairment of the right upper extremity. In a corrected report dated

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<sup>14</sup> 5 U.S.C. § 8107.

<sup>15</sup> 20 C.F.R. § 10.404.

<sup>16</sup> 20 C.F.R. § 10.404(a).

<sup>17</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

February 22, 2006, Dr. Craddock reapplied the A.M.A., *Guides* to his range of motion measurements and concluded that appellant had a 30 percent right upper extremity impairment. The Board notes, however, that under the A.M.A., *Guides* 65 degrees flexion constitutes an 8 percent impairment,<sup>18</sup> 10 degrees extension constitutes a 2 percent impairment,<sup>19</sup> 5 degrees internal rotation constitutes a 5 percent impairment,<sup>20</sup> 20 degrees external rotation constitutes a 1 percent impairment,<sup>21</sup> 50 degrees abduction constitutes a 6 percent impairment<sup>22</sup> and 10 degrees adduction constitutes a 1 percent impairment,<sup>23</sup> which when added equal a 23 percent right upper extremity impairment. Consequently, Dr. Craddock's finding of a 30 percent right upper extremity impairment does not conform with the A.M.A., *Guides*. As his report does not conform to the A.M.A., *Guides*, it is of diminished probative value.<sup>24</sup> Additionally, Dr. Craddock did not provide any medical explanation for the substantial decrease in appellant's range of motion of the right shoulder over a short time period.

The Office referred appellant to Dr. Arrington for a second opinion on the extent of his permanent impairment. On March 29, 2006 Dr. Arrington found no loss of strength or sensation and full range of motion for the elbow and wrists with no swelling or spasm. For the right shoulder, he obtained range of motion measurements at two separate times and with "distraction." Dr. Arrington properly applied the A.M.A., *Guides* to find that 90 degrees forward flexion yielded a 6 percent impairment,<sup>25</sup> 40 degrees extension yielded a 1 percent impairment,<sup>26</sup> 90 degrees abduction yielded a 4 percent impairment,<sup>27</sup> 40 degrees adduction yielded no impairment,<sup>28</sup> 70 degrees internal rotation yielded a 1 percent impairment<sup>29</sup> and 60 degrees external rotation yielded no impairment.<sup>30</sup> He added the loss of range of motion and determined that appellant had a 12 percent permanent impairment of the right upper extremity. On June 5, 2006 an Office medical adviser concurred with Dr. Arrington's conclusions. The Board finds that Dr. Arrington's report, which is based on a complete evaluation and a proper application of

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<sup>18</sup> *Supra* note 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 479, Figure 16-46.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 477, Figure 16-43.

<sup>23</sup> *Id.*

<sup>24</sup> *Mary L. Henninger*, 52 ECAB 408 (2001).

<sup>25</sup> *Supra* note 2.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 477, Figure 16-43.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 479, Figure 16-46.

<sup>30</sup> *Id.*

the A.M.A., *Guides*, constitutes the weight of the medical evidence and establishes that appellant has no more than a 12 percent permanent impairment of the right upper extremity. As he previously received schedule awards for a 15 percent right upper extremity impairment, the Office properly found that he was not entitled to an increased schedule award.

On appeal, appellant contends that Dr. Arrington's report is not in accordance with the A.M.A., *Guides*. As discussed, however, Dr. Arrington properly applied the A.M.A., *Guides* to his range of motion measurements. It is the report of Dr. Craddock which departs from the protocols of the A.M.A., *Guides*.

**CONCLUSION**

The Board finds that appellant has no more than a 15 percent permanent impairment of the right upper extremity for which he received schedule awards.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 13 and July 5, 2006 are affirmed.

Issued: July 18, 2007  
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