

FACTUAL HISTORY

On December 3, 2004 appellant, then a 62-year-old sack sorting machine operator, filed a traumatic injury claim alleging that he injured his left shoulder on that date when he pulled a heavy letter tray toward the induction belt. The Office accepted appellant's claim for left shoulder strain on February 8, 2005. It later accepted a complete rotator cuff tear.

Dr. Tod Northrup, an osteopath, performed an arthroscopic repair of a massive rotator cuff tear in appellant's left shoulder on March 3, 2005. He also performed an arthroscopic subacromial decompression of the left shoulder with arthroscopic partial distal claviclectomy and transcatheter therapy to the left shoulder.

Appellant requested a schedule award on January 19, 2006. In a report dated January 19, 2006, Dr. Northrup stated that appellant had reached maximum medical improvement. He found that appellant had mild to moderate weakness with lifting in the front or side with mild weakness in the scapular plane as well as weak external rotation. Dr. Northrup indicated that appellant had stiffness reaching behind his back, adhesive capsulitis with an internal rotation deficit. He concluded that appellant had four percent impairment to the whole person as a result of his left shoulder condition.

The Office medical adviser reviewed the medical evidence on April 6, 2006 and indicated that appellant reached maximum medical improvement on January 19, 2006. He reviewed appellant's March 3, 2005 surgeries and found that there was insufficient information regarding appellant's range of motion to calculate an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.² The Office medical adviser found that appellant was entitled to 10 percent impairment to his left upper extremity due to the distal clavicle resection arthroscopy.³ He noted that additional medical evidence regarding the extent of appellant's loss of range of motion was required to combine this impairment rating with the diagnosis-based estimate.

In a letter dated June 12, 2006, the Office requested that appellant secure additional evidence from his physician regarding loss of range of motion to the left shoulder. In a report dated June 26, 2006, Sean M. Powell, a physician's assistant,⁴ addressed the extent of appellant's loss of internal rotation of his left shoulder. He stated that appellant lacked 10 degrees of internal rotation and concluded that this was one percent impairment of the left shoulder. The Office medical adviser reviewed this report on June 29, 2006 and concluded that appellant had an additional one percent impairment of his left shoulder due to loss of internal rotation of 10 degrees. He concluded that appellant had 11 percent impairment of his left upper extremity.

² A.M.A., *Guides*, 5th ed. (2000).

³ *Id.* at 506, Table 16-27.

⁴ A physician's assistant does not meet the definition of a "physician" as set out in the Act. 5 U.S.C. § 8101(2). This report is not medical evidence unless and until it is adopted by a physician. *Allen C. Hundley*, 53 ECAB 551, 554 (2002); *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998).

By decision dated July 13, 2006, the Office granted appellant a schedule award for 11 percent impairment of his left upper extremity.

In a letter dated July 19, 2006, appellant stated that he had not been given an impairment examination and that he disagreed with the amount of his schedule award. He alleged that he could not raise his left arm above the shoulder and that he felt this represented a 50 percent impairment to his left arm. Appellant requested reconsideration.

By decision dated August 1, 2006, the Office denied appellant's request for reconsideration of the merits on the grounds that he failed to submit relevant new evidence in support of his request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Act⁵ and its implementing regulation⁶ 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 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁷ Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁸

ANALYSIS -- ISSUE 1

Appellant's physician, Dr. Northrup, an osteopath, opined that appellant had reached maximum medical improvement on January 19, 2006. He indicated that appellant had weakness in his left shoulder as well as loss of range of motion. However, Dr. Northrup did not provide any specific figures in support of his conclusion that appellant was entitled to a schedule award of four percent of the whole person due to his left shoulder impairments. No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations.⁹ Furthermore, a schedule award is not payable for an impairment of the whole person.¹⁰ Appellant is therefore not entitled to a schedule award for impairment to the whole person.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

⁹ *Brent A. Barnes*, 56 ECAB ____ (Docket No. 04-2025, issued February 15, 2005).

¹⁰ *Id.*

The Office medical adviser reviewed the medical evidence and noted that Dr. Northrup had performed a distal clavicle arthroplasty on March 3, 2005. He properly found that this surgery resulted in 10 percent impairment of appellant's left shoulder.¹¹ The Office medical adviser noted that any loss of range of motion of appellant's left shoulder could be combined with the impairment for arthroplasty.¹² On June 29, 2006 he adopted the report of the physician's assistant and found that a loss of internal rotation of 10 degrees entitled appellant to an additional 1 percent impairment.¹³ The Office medical adviser properly combined appellant's impairment ratings to reach 11 percent impairment of the left upper extremity for schedule award purposes.¹⁴ The evidence in the record supports that appellant has no more than 11 percent impairment of his left upper extremity for which he received a schedule award.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹⁵ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁷

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the Office's June 29, 2006 decision on July 19, 2006. In his letter, he stated that he had not been given an impairment examination and disagreed with the amount of his schedule award. Appellant alleged that he could not raise his left arm above the shoulder and that he had a 50 percent impairment of his left arm.

Appellant's statements do not address a legal argument or advance a point of law and therefore fail to meet the first and second standards of the Office's regulations. He has merely stated his belief as a lay person that he has more than 11 percent impairment of his left arm and is therefore entitled to a greater schedule award. Lay persons are not competent to render a medical opinion.¹⁸ The relevant issue in this claim, whether appellant has more than 11 percent

¹¹ A.M.A., *Guides*, 506, Table 16-27.

¹² *Id.* at 505, section 16.7b, *Arthroscopy*.

¹³ A.M.A., *Guides*, 479, Figure 16-46.

¹⁴ *Id.* at 604, *Combined Values Chart*.

¹⁵ 5 U.S.C. §§ 8101-8193, § 8128(a).

¹⁶ 20 C.F.R. § 10.606(b)(2).

¹⁷ 20 C.F.R. § 10.608(b).

¹⁸ *Jaja K. Asaramo*, 55 ECAB 200, 206 (2004).

impairment of his left upper extremity, is a medical question and must be resolved by the submission of relevant medical evidence.¹⁹ Appellant did not submit any medical evidence addressing the extent of his permanent impairment. He has failed to meet the third standard of the Office's regulations and the Office was not required to reopen his claim for further consideration of the merits.

CONCLUSION

The Board finds that the medical evidence included in the record establishes that appellant has no more than 11 percent impairment of his left upper extremity. The Board further finds that appellant's July 19, 2006 request for reconsideration was not sufficient to require the Office to reopen his claim for consideration of the merits.

ORDER

IT IS HEREBY ORDERED THAT August 1 and July 13, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 6, 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

¹⁹ *Id.*