



left shoulder tenosynovitis and neck strain. Appellant stopped work on July 30, 2003. On November 6, 2003 Dr. William C. Lyon, a Board-certified orthopedic surgeon, performed a debridement of the undersurface of the left rotator cuff and acromioplasty of the acromioclavicular joint.

On April 1, 2004 the Office referred appellant to Dr. Thomas Schmitz, a Board-certified orthopedic surgeon, for a second opinion evaluation. The Office requested that Dr. Schmitz address appellant's work limitations and the extent of any permanent impairment of the upper extremities in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

Appellant filed a claim for a schedule award on April 29, 2004. On April 30, 2004 he retired from the employing establishment.

In a report dated May 7, 2004, Dr. Schmitz opined that appellant reached maximum medical improvement on May 1, 2004.<sup>2</sup> He described his shoulder pain as uncomfortable and not limited to a particular part of the shoulder or nerve distribution. Dr. Schmitz measured range of motion of the right shoulder as 130 degrees forward elevation, 40 degrees backward elevation, 90 degrees abduction, 30 degrees adduction, 60 degrees internal rotation, 65 degrees external rotation and 40 degrees extension.<sup>3</sup> He measured range of motion of the left shoulder as 130 degrees forward elevation, 40 degrees backward elevation, 90 degrees abduction, 30 degrees adduction, 60 degrees internal rotation, 75 degrees external rotation and 40 degrees extension. Dr. Schmitz found that appellant had no weakness or atrophy. He stated, "I do not think that pain is a contributory factor to [appellant's] impairment."

In a report dated July 28, 2004, Dr. Lyon discussed the range of motion findings by Dr. Schmitz. He stated that appellant's function "by my estimate is better than that described by Dr. Schmitz and is reasonably symmetrical on both sides." Dr. Lyon listed work restrictions.

On August 6, 2004 an Office medical adviser reviewed Dr. Schmitz' report and found that appellant had a 12 percent permanent impairment of the left upper extremity. By decision dated August 31, 2004, the Office terminated appellant's compensation on the grounds that he refused an offer of suitable work. On July 25, 2005 an Office hearing representative reversed the August 31, 2004 decision. He noted that the case was in posture for a schedule award determination.

An Office medical adviser reviewed the medical evidence on September 23, 2005. Applying the A.M.A., *Guides* to Dr. Schmitz range of motion measurements for the right and left shoulder, he determined that appellant had 3 percent impairment due to loss of flexion,<sup>4</sup> a 1

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<sup>2</sup> Dr. Schmitz also addressed appellant's work restrictions.

<sup>3</sup> Dr. Schmitz' measurement of 40 degrees extension appears to duplicate his measurement of 40 degrees backward elevation.

<sup>4</sup> A.M.A., *Guides* at 476, Figure 16-40.

percent impairment due to loss of extension,<sup>5</sup> a 4 percent impairment due to loss of abduction,<sup>6</sup> a 1 percent impairment for loss of adduction<sup>7</sup> and a 1 percent impairment for loss of internal rotation,<sup>8</sup> which he added to find a total range of motion impairment of 11 percent. The Office medical adviser further found that appellant had 25 percent graded impairment due to pain of the axillary nerve or deltoid muscle which he multiplied to find a 1 percent impairment for the right and left upper extremity.<sup>9</sup> He combined the 1 percent impairment due to pain and the 11 percent impairment due to loss of range of motion to find a total impairment of each upper extremity of 12 percent. The Office medical adviser determined that appellant reached maximum medical improvement on May 6, 2004. He noted that she had a cervical disc herniation and degenerative disc disease, but found that he had no “neurologic deficit in either upper extremity as a result of this.”

By decision dated November 29, 2005, the Office granted appellant a schedule award for a 12 percent permanent impairment of the right upper extremity and a 12 percent permanent impairment of the left upper extremity. The period of the award ran for 74.88 weeks from September 1, 2004 to February 7, 2006.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>10</sup> and its implementing federal regulation,<sup>11</sup> 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>12</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>13</sup>

### **ANALYSIS**

The Office accepted that appellant sustained bilateral adhesive capsulitis of the shoulders, left shoulder tenosynovitis and neck strain due to factors of his federal employment. Appellant

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

<sup>6</sup> *Id.* at 477, Figure 16-43.

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

<sup>8</sup> *Id.* at 479, Figure 16-46.

<sup>9</sup> *Id.* at 492, 482, Tables 16-15, 16-10.

<sup>10</sup> 5 U.S.C. § 8107.

<sup>11</sup> 20 C.F.R. § 10.404.

<sup>12</sup> 20 C.F.R. § 10.404(a).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

filed a claim for a schedule award on April 29, 2004. The Office referred appellant to Dr. Schmitz for a second opinion examination to determine the extent of his employment-related disability and permanent impairment of the upper extremities.

On May 7, 2004 Dr. Schmitz measured appellant's bilateral shoulder range of motion as 130 degrees forward flexion, 40 degrees backward elevation, 90 degrees abduction, 30 degrees adduction and 60 degrees internal rotation. He further found that appellant had 65 degrees external rotation on the right side and 75 degrees external rotation on the left side. Dr. Schmitz found no weakness or atrophy. He noted that appellant experienced some pain, but opined that it did not contribute to his impairment.

On September 23, 2005 the Office medical adviser reviewed Dr. Schmitz' report and applied the A.M.A., *Guides* to his findings. He determined that, for the right and left shoulder, 130 degrees forward flexion constituted a 3 percent impairment,<sup>14</sup> 40 degrees backward elevation or extension, constituted a 1 percent impairment,<sup>15</sup> 90 degrees abduction constituted a 4 percent impairment,<sup>16</sup> 30 degrees adduction constituted a 1 percent impairment<sup>17</sup> and 60 degrees internal rotation constituted a 2 percent impairment.<sup>18</sup> The Board notes that 65 degrees external rotation of the right shoulder and 75 degrees external rotation of the left shoulder do not yield an impairment.<sup>19</sup> The Office medical adviser properly added the impairments due to loss of range of motion to find an 11 percent permanent impairment.<sup>20</sup> He further determined that appellant had an impairment due to pain of the axillary nerve. The Office medical adviser multiplied the maximum provided for sensory deficit of the axillary nerve, 5 percent, by 25 percent for graded pain, to find an additional 1 percent impairment of each upper extremity.<sup>21</sup> He combined the 11 percent impairment due to loss of range of motion with the 1 percent impairment due to pain and concluded that appellant had a 12 percent total impairment of each upper extremity.<sup>22</sup> Appellant has not submitted probative medical evidence showing that he has more than a 12 percent permanent impairment of each upper extremity.

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<sup>14</sup> A.M.A., *Guides* at Figure 16-40.

<sup>15</sup> *Id.*

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

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 479, Figure 16-46. The Board notes that the Office medical adviser indicated that appellant had a one percent impairment due to loss of internal rotation. This appears to be a typographical error as he properly added the impairment determinations to find a 12 percent impairment due to loss of range of motion.

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

<sup>20</sup> *Id.* at 452.

<sup>21</sup> *Id.* at 492, 482, Tables 16-15, 16-10.

<sup>22</sup> *Id.* at 604.

**CONCLUSION**

The Board finds that appellant has no more than a 12 percent permanent impairment of each upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 29, 2005 is affirmed.

Issued: May 10, 2007  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board