



and a right rotator cuff tear. Appellant had his shoulder surgically repaired on March 30, 2004 by Dr. Louis C. Redix, an orthopedic surgeon. He returned to light duty on June 8, 2004 and full duty on July 10, 2004.

On July 30, 2004 appellant filed a claim for a schedule award. In an August 3, 2004 letter, the Office requested that Dr. Redix complete impairment worksheets for the shoulder so an impairment rating could be prepared under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Redix submitted reports on appellant's condition. However, none of the reports provided the information necessary so an impairment rating could be prepared under the A.M.A., *Guides*.

In letters dated January 28, 2005 and May 15, 2006, the Office requested that appellant obtain an updated report from Dr. Redix about his permanent impairment. Impairment worksheets for the shoulder were attached so an impairment rating could be prepared under the A.M.A., *Guides*. Dr. Redix, however, did not respond to the Office's request for an impairment rating.

On November 2, 2006 the Office referred the case file, a statement of accepted facts to Dr. Rajeswari Kumar, a Board-certified physiatrist, for a second opinion to determine the extent of appellant's permanent impairment to the right arm under the A.M.A., *Guides*. In a December 20, 2006 report, Dr. Kumar reviewed the history of injury for both left and right shoulder work-related injuries, presented his examination findings and diagnosed bilateral impingement syndrome involving both shoulders; bilateral adhesive capsulitis of the shoulder; and possible post-traumatic osteoarthritis of both shoulders. He noted that on physical examination appellant exhibited no atrophy or weakness in the shoulder girdle muscles, but had bilateral impingement syndrome, a positive Neer test and limited range of motion of both shoulders. Dr. Kumar advised that appellant had not reached maximum medical improvement and he could benefit from a short course of therapy or a cortisone injection in both shoulders. He further advised that appellant could lift and carry 15 pounds frequently and 25 pounds occasionally. In an attached shoulder impairment evaluation form dated December 19, 2006, Dr. Kumar advised that appellant had not reached maximum medical improvement. He noted that appellant's shoulder pain interfered with daily activity, but there was no weakness or atrophy of the upper extremities. Dr. Kumar additionally provided range of motion findings for both the right and left shoulder.

In an August 25, 2007 report, the Office medical adviser reviewed the medical evidence with respect to the accepted conditions of right shoulder strain and rotator cuff tear, with surgical repair, and applied Dr. Kumar's findings of the right shoulder to the table and figures of the A.M.A., *Guides*. The Office medical adviser found that appellant had eight percent impairment of the right arm. This was comprised of four percent impairment due to loss of range of motion and four percent impairment due to sensory deficit or pain. The Office medical adviser further found that appellant reached maximum medical improvement on December 19, 2006.

By decision dated September 12, 2007, the Office granted appellant a schedule award for an eight percent permanent impairment to his right upper extremity. The period of the award ran for 29.96 weeks from December 19, 2006 to June 11, 2007.

## LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations<sup>2</sup> sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of schedule members or functions of the body. The Act, however, does not specify the manner in which the percentage loss of a member 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* (5<sup>th</sup> ed.) has been adopted by the Office for evaluating schedule losses.<sup>3</sup>

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. The Board has defined maximum medical improvement as meaning that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician which is accepted as definitive by the Office.<sup>4</sup>

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.<sup>5</sup>

## ANALYSIS

The Board finds that this case is not in posture for a decision as the permanent impairment rating on which the Office relied was insufficient to establish the schedule award.

The Office referred the medical evidence of record, including the report of the second opinion physician, Dr. Kumar, to its Office medical adviser for an impairment rating in accordance with the protocols of the A.M.A., *Guides*. The Board finds that the Office medical adviser's opinion is insufficient to establish a permanent impairment rating for appellant's right upper extremity.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> See 20 C.F.R. § 10.404; see also *David W. Ferrall*, 56 ECAB 362 (2005).

<sup>4</sup> *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

The A.M.A., *Guides* explains that impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized:

“It is understood that an individual’s condition is dynamic. Maximum medical improvement [MMI] refers to a date from which further recovery or deterioration is not anticipated, although over time there may be some expected change. Once an impairment has reached MMI, a permanent impairment rating may be performed.”<sup>6</sup>

This is consistent with Office procedures which provide that maximum medical improvement must be reached before a schedule award is made.<sup>7</sup>

Dr. Kumar examined appellant on December 19, 2006 and specifically advised that maximum medical improvement had not been met. In his December 20, 2006 report, he reported that appellant could benefit from a short course of therapy or a cortisone injection in his shoulder. The Office medical adviser, however, found that appellant reached maximum medical improvement on December 19, 2006, the date of Dr. Kumar’s examination. This is inconsistent with Dr. Kumar’s report. The medical adviser provided no further discussion or support for her finding that appellant had reached maximum medical improvement and the Office did not seek any further opinion from Dr. Kumar regarding this. At the time of Dr. Kumar’s examination, there was no other current medical evidence of record in which an examining physician determined that appellant had reached maximum medical improvement. Therefore, the Board finds that it was premature for the Office to make a determination of appellant’s permanent impairment due to his employment injury.

Upon return of the case record, the Office should further develop the medical evidence to determine if appellant has reached his level of maximum medical improvement and, if so, it should determine his degree of permanent impairment caused by his accepted employment injury.<sup>8</sup>

### CONCLUSION

The Board finds that the case is not in posture for decision. The Board will remand the case for further development of the medical evidence and an appropriate final decision on appellant’s entitlement to a schedule award for his accepted employment injury on January 6, 2004.

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<sup>6</sup> A.M.A., *Guides* at 19; *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(1) (October 1990).

<sup>8</sup> Due to the disposition of the issue, it is not necessary for the Board to address whether appellant’s impairment rating was properly calculated.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2007 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: April 17, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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