

orthopedic surgeon. The Board noted that Dr. House's measurements for flexion, extension and abduction supported a five percent impairment of the right upper extremity due to loss of motion, but he reported no measurements for external and internal rotation or adduction. The Board also noted that he did not explain why he was awarding an extra five percent impairment due to pain, as the impairment rating for loss of motion already included an allowance for the pain that individuals typically experience when they suffer from various injuries.²

On January 9, 2008 Dr. House reported 90 degrees internal and external rotation and 50 degrees adduction. He added: "This patient's greatest disability is due to pain and loss of endurance in the shoulder and using the Maryland Codes, she was given an additional five (5) percent disability to the shoulder."

Dr. Arnold T. Berman, an Office medical adviser, noted that Dr. House used the wrong standard to evaluate appellant's pain. He assigned a three percent impairment under Figure 18-1, step 3, page 574, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a decision dated February 28, 2008, the Office denied an additional schedule award. On appeal, appellant, through her attorney, asks the Board to vacate the February 28, 2008 decision and remand the case for the Office to obtain clarification from Dr. House with specific instructions on the use of the A.M.A., *Guides*.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act³ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁴

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming, or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record

² The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference. On November 2, 2004 appellant, then a 47-year-old clerk, filed a claim alleging that her right upper extremity condition was a result of repetitiously filing mail for long hours. The Office accepted her claim for right shoulder strain. On August 8, 2006 it paid a schedule award for three percent right upper extremity impairment due to pain. On April 11, 2007 the Office paid an additional schedule award for five percent impairment due to loss of shoulder motion.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.⁵ Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.⁶

ANALYSIS

The Board previously found that appellant had a five percent impairment of the right upper extremity due to loss of shoulder flexion and abduction. The Board noted, however, that Dr. House, the impartial medical specialist, did not report measurements for internal and external rotation or adduction. In a January 9, 2008 report, Dr. House supplied this information. According to Figure 16-46, page 479 of the A.M.A., *Guides*, 90 degrees internal and external rotation represents no impairment. Under Figure 16-43, page 477, 50 degrees adduction also represents no impairment. However, Dr. House reiterated that appellant's pain constituted a factor of impairment. He explained that he based his estimate of pain impairment on the Maryland Codes, which is not the proper standard under the Act. Dr. Berman, the Office medical adviser, correctly noted this, but rather than ask Dr. House for a proper evaluation under the A.M.A., *Guides*, he assigned a three percent impairment under Figure 18-1, page 574.

The Board finds that the Office medical adviser exceeded his role. This was not a situation in which Dr. Berman took the objective clinical findings of an examining physician to compare them with the impairment criteria listed in the A.M.A., *Guides*.⁷ Pain is subjective but may serve as a basis for determining impairment.⁸ The Office medical adviser substituted his judgment for Dr. House's. An Office medical adviser may review a report to verify the correct application of the A.M.A., *Guides* and confirm the percentage of permanent impairment,⁹ but it is the impartial medical specialist who must resolve a conflict in medical opinion.¹⁰ It is well established that when a referee examination is arranged to resolve a conflict in medical opinion, the medical adviser is not to attempt clarification of expansion of the impartial medical specialist's opinion.¹¹

The Board will set aside the Office's February 28, 2008 decision and remand the case for clarification from Dr. House on appellant's impairment due to pain utilizing the A.M.A., *Guides*.

⁵ See *Nathan L. Harrell*, 41 ECAB 402 (1990).

⁶ *Harold Travis*, 30 ECAB 1071 (1979).

⁷ If the clinical findings are fully described, any knowledgeable observer may check the findings with the A.M.A., *Guides* criteria. A.M.A., *Guides* 17.

⁸ See *Cynthia M. Judd*, 42 ECAB 246 (1990); *Robert M. Sergerstrom*, 34 ECAB 1662 (1983).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7(c) (April 1993).

¹⁰ *Richard R. LeMay*, 56 ECAB 341, 348 (2005).

¹¹ Federal (FECA) Procedural Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5(c) (October 1995).

If he is unable to clarify his opinion, the Office shall refer appellant to a second impartial medical specialist to resolve the issue of the extent of permanent impairment.

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 February 28, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: December 24, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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