

light duty following her injury. On March 28, 2005 appellant filed a notice of recurrence, (Form CA-2a,) alleging that she aggravated her injury while reaching into a box to retrieve files.

On May 27, 2005 the Office accepted appellant's claim for left arm neuralgia caused by the displacement of her pacemaker. Appellant stopped working on June 29, 2005, when her pacemaker was surgically repositioned on the right side. Because the employing establishment could not meet her medical restrictions, appellant did not return to work. On March 29, 2006 appellant's application for disability retirement was accepted by the Office of Personnel Management.

On March 7, 2006 appellant filed a claim for a schedule award. On May 11, 2006 the Office notified her of the medical evidence required for establishing permanent impairment. Appellant was informed of the need for her impairment rating to be based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed., 2001).

On June 6, 2006 Dr. Kousik Krishnan, a Board-certified cardiac electrophysiologist, stated that appellant had reached maximal medical improvement for both her right and left arms. He stated that she was unlikely to have any further improvement in her pain, range of motion or strength. Dr. Krishnan noted that appellant had identical restrictions for both of her arms against lifting more than 10 pounds or lifting her arms above 90 degrees. He stated that her left arm had decreased strength and severe pain with movements over 90 degrees and with heavy lifting. Appellant's right arm was restricted because of the placement of her pacemaker and not because of pain or loss of strength. Her subjective complaints included left arm pain with movements greater than 90 degrees and the inability to lift more than 10 pounds with her left arm without pain and discomfort. Dr. Krishnan found that she had a Class 4 impairment of 55 to 75 percent in both of her arms that prohibited useful functioning.¹

On August 16, 2006 the Office provided appellant's file to an Office medical adviser. On August 24, 2006 Dr. Benjamin Crane noted that appellant had a history of sinus node dysfunction, which had been treated with a pacemaker placed in her left upper chest. The pacemaker was moved when the pain and discomfort, which began in December 2004, could not be alleviated in any other way. Dr. Crane reported that appellant continued to experience pain at the previous pacemaker insertion site. He stated that the medical evidence did not include findings on range of motion or grading of loss of strength or sensation. Dr. Crane noted that there were no electromyograms (EMGs) or other advanced imaging studies available for review. Referencing to the A.M.A., *Guides*, Table 16-10, page 482 and Table 16-15, page 492, he found that appellant had one percent impairment of her left upper extremity for Grade 4 pain in the distribution of the axillary nerve.

¹ Dr. Krishnan did not indicate which rating system his rating was based on.

By decision dated November 29, 2006, the Office granted appellant a schedule award for one percent impairment of her upper left extremity.²

On March 20, 2007 appellant requested reconsideration. She stated that Dr. Crane's findings were not an accurate representation of her condition. Appellant contended that the pain caused by her accepted injury required her pacemaker to be moved to the right side, which limited the strength and range of motion of her right arm. She provided a February 12, 2007 report from Dr. Krishnan, which is duplicative of the June 6, 2006 report, except for the addition of a chart indicating that both of appellant's arms had a range of motion of less than 90 degrees, decreased strength of 4/5 and decreased sensation of 4/5.

By decision dated May 16, 2007, the Office denied reconsideration of appellant's claim on the grounds that she had not raised any substantive legal questions or submitted new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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 should 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 standards applicable to all claimants.⁵ 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, 2001.⁶

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.⁷ Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.⁸ However, decreased strength cannot be rated in the presence of decreased

² On January 10, 2007 appellant filed an appeal of this decision with the Board, which was docketed as No. 07-659. On February 20, 2007 she requested that her appeal be dismissed so that she could pursue reconsideration with the Office. By order dated April 20, 2007, the Board dismissed the appeal.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁷ See *Paul A. Toms*, 28 ECAB 403 (1987).

⁸ A.M.A., *Guides* 433-521, Chapter 16, The Upper Extremities, (5th ed. 2001).

motion, painful conditions, deformities or absence of parts that prevent effective application of maximal force in the region being evaluated.⁹

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision because the opinions of the Office medical adviser and Dr. Crane are insufficient to establish the degree of permanent impairment.

On August 24, 2006 Dr. Crane provided a brief medical history and reported that appellant had pain at the previous pacemaker insertion site. He noted that the medical evidence he reviewed did not grade range of motion, strength deficiency or sensation deficiency and did not contain EMGs or other advanced imaging studies. Dr. Crane stated that according to the A.M.A., *Guides*, Table 16-10, page 482, and Table 16-15, page 492, appellant had one percent impairment of her left upper extremity for Grade 4 pain in the distribution of the axillary nerve.

The Board has held that, in schedule award cases where an examining physician has provided a description of physical findings but failed to properly apply the A.M.A., *Guides*, a detailed opinion by the Office medical adviser giving an impairment rating based on the reported findings and the A.M.A., *Guides* may constitute the weight of the medical evidence.¹¹ The Office procedures state that when an Office medical adviser explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides* and considers each of the reported findings of impairment, his or her opinion may constitute the weight of the medical opinion evidence.¹²

The Board finds that the impairment rating provided by Dr. Crane does not constitute the weight of the medical opinion evidence because he did not provide adequate rationale.¹³ When determining appellant's left upper extremity rating, Dr. Crane provided no explanation for his assignment of Grade 4, which represents a range of sensory deficit or pain from 1 to 25 percent, to appellant's axillary nerve. He did not explain which of Dr. Krishnan's findings he relied on to arrive at this grading or the exact percentage within the range he used for his calculations.¹⁴

⁹ *Id.* at 508.

¹⁰ *Thomas J. Fragale*, 55 ECAB 619 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

¹¹ *James Massenburg*, 29 ECAB 850 (1978).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7(h) (April 1993).

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) ("As a matter of course, the [Office medical adviser] should provide rationale for the percentage of impairment specified.")

¹⁴ See A.M.A., *Guides* 482 (method for determining impairment ratings).

Without rationale explaining how he arrived at his medical opinion, using examination findings, the Board is unable to determine whether Dr. Crane properly followed the A.M.A., *Guides* or Office procedures. The Board therefore finds that the impairment rating provided by Dr. Crane is an insufficient basis for the Office's schedule award.

On remand, the Office should determine whether Dr. Krishnan's report contains adequate findings to determine a schedule award in accordance with the A.M.A., *Guides*. Following this and any necessary further development, the Office should issue an appropriate schedule award.

CONCLUSION

The Board finds that this case is not in posture for a decision because the opinion of the Office medical adviser is insufficient to establish appellant's permanent impairment rating. The case is remanded for further medical development followed by an appropriate decision.¹⁵

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 16, 2007 and November 19, 2006 are set aside and the case is remanded for action consistent with this decision.

Issued: February 5, 2008
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

¹⁵ In light of the Board's disposition of the first issue, the second issue is moot.