

and resection of torn labrum. On July 30, 2004 he was medically released to light duty. On October 22, 2004 he was released to full duty with restrictions on pull-ups and push-ups for six months. On February 16, 2007 the Office accepted the claim for a left shoulder impingement and paid appropriate benefits.

On March 5, 2007 appellant filed a claim for a schedule award. In a December 27, 2006 report, Dr. Joseph Corona, a Board-certified orthopedic surgeon, reviewed the history of injury and appellant's treatment. He noted appellant's complaints of persistent left shoulder discomfort and advised that left shoulder examination revealed full shoulder motion in all planes including elevation, internal rotation, external rotation, adduction, extension and abduction. Normal strength of the supraspinatus, infraspinatus and subscapularis muscles was noted with slight anterolateral tenderness on palpation of the cuff. Impingement signs were trace positive with no tenderness at the left acromioclavicular joint. Postoperative objective tests were also negative. Dr. Corona concluded that appellant had achieved maximum medical improvement. Based on the Fifth Edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he opined that appellant had no measurable objective findings and, therefore, had no ratable impairment. In a December 28, 2006 supplemental report, Dr. Corona opined that appellant had a three percent permanent impairment of the left arm based on pain under Chapter 18.

In a March 6, 2007 report, Dr. George L. Rodriguez, a Board-certified physiatrist, advised that appellant had left shoulder impingement syndrome and chronic pain as a result of the March 18, 2004 work injury. Appellant complained of constant pain with decreased range of motion and weakness in the left shoulder. Range of motion of the left shoulder revealed 160 degrees abduction, 160 degrees flexion, normal adduction, 20 degrees extension, 20 degrees external rotation and 45 degrees internal rotation. Dr. Rodriguez advised that the neurological examination was normal but strength could not be tested due to pain. Under the A.M.A., *Guides*, he opined that appellant had 21 percent left arm impairment. Under Figure 16-40, page 476 of the A.M.A., *Guides*, Dr. Rodriguez found that 160 degrees flexion equaled one percent impairment and 20 degrees of extension equaled three percent impairment. Under Figure 16-43 of the A.M.A., *Guides*, he found that 160 degrees of abduction equaled one percent impairment and a normal or 50 degrees of adduction equaled zero percent impairment. Under Figure 16-46, page 479 of the A.M.A., *Guides*, Dr. Rodriguez found that 20 degrees of external rotation equaled one percent impairment and 20 degrees of internal rotation equaled four percent impairment. He added the range of motion impairments to arrive at a 10 percent total impairment. Under Table 16-27, page 506 of the A.M.A., *Guides*, Dr. Rodriguez found that appellant's resection arthroplasty of the distal clavicle (isolated) equaled 10 percent upper extremity impairment. He also opined that, under section 18.3d, A & C, page 573 of the A.M.A., *Guides*, appellant had a three percent whole person impairment due to pain, which he converted a five percent upper extremity impairment under Figure 16-2, page 441 of the A.M.A., *Guides*. Dr. Rodriguez added the impairment ratings totaled 21 percent left upper extremity impairment.

On April 30, 2007 the Office referred the case file, a statement of accepted facts and Dr. Corona's medical report to an Office medical adviser to determine the extent of appellant's permanent impairment to the left upper extremity under the A.M.A., *Guides*. In a May 4, 2007 report, the Office medical adviser opined that appellant reached maximum medical improvement on December 27, 2006, when Dr. Corona performed his examination. Based on Dr. Corona's

evaluation and Chapter 18.3a, page 570 of the A.M.A., *Guides*, the Office medical adviser opined that appellant had a three percent left upper extremity impairment for pain. The Office medical adviser explained that appellant's pain, due to a verifiable medical condition, had not been addressed by other impairment methods used in the A.M.A., *Guides* for this condition.

By decision dated July 10, 2007, the Office granted appellant a schedule award for three percent permanent impairment to his left arm. The period of the award ran for 9.36 weeks from December 27, 2006 through March 2, 2007.

On appeal, appellant's attorney contended that appellant had greater impairment based on Dr. Rodriguez's March 6, 2007 report.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² 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. 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* (5th ed.) has been adopted by the Office for evaluating schedule losses.³

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.⁴

ANALYSIS

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is necessary to determine whether appellant has more than three percent left upper extremity impairment.

On July 10, 2007 appellant received a schedule award for three percent impairment to his left arm. This was based on the Office medical adviser's application of the A.M.A., *Guides* to the findings of Dr. Corona who found that appellant had no measurable objective findings, but had three percent impairment due to pain pursuant to Chapter 18 of the A.M.A., *Guides*. The Office medical adviser agreed that appellant had a three percent left upper extremity impairment

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

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

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

due to pain pursuant to Chapter 18.3a, page 570 of the A.M.A., *Guides*. Chapter 18 provides that an impairment percentage determined according to the body or organ rating system in other chapters may be increased by up to three percent based on an informal pain assessment.⁵ Dr. Corona, however, did not find that appellant had any impairment based on other chapters of the A.M.A., *Guides*. However, the A.M.A., *Guides* provide that examiners should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.⁶ While Dr. Corona referenced various tables within Chapter 18 of the A.M.A., *Guides*, neither he nor the Office medical adviser provided sufficient reasoning to support application of Chapter 18. Thus, the opinions of Dr. Corona, Dr. Rodriguez and the Office medical adviser do not provide a proper basis for establishing permanent impairment of the left arm under the A.M.A., *Guides*.

Furthermore, the Office medical adviser did not address the March 6, 2007 report of Dr. Rodriguez who found range of motion impairments where Dr. Corona found none. Application of Dr. Rodriguez's range of motion findings to the A.M.A., *Guides* results in nine percent impairment. Under Figure 16-40, page 476 of the A.M.A., *Guides*, 160 degrees flexion equals one percent impairment and 20 degree extension equals two percent impairment.⁷ Under Figure 16-43 of the A.M.A., *Guides*, 160 degrees abduction equals one percent impairment. Under Figure 16-46, page 479 of the A.M.A., *Guides*, 20 degrees of external rotation equals one percent impairment and 20 degrees internal rotation equals four percent impairment. Dr. Rodriguez also asserted that appellant's left shoulder surgery qualified as a distal clavicle resection, isolated, under Table 16-27, warranting 10 percent impairment. However, the Office medical adviser did not address any aspect of the report from Dr. Rodriguez. The Office medical adviser failed to consider all material information available in the case record or provide rationale for selecting one medical report over another. Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁸

The case will be remanded for the Office to obtain a supplemental report which provides a detailed reasoned medical opinion on the extent of appellant's permanent impairment, pursuant to the A.M.A., *Guides*. Following this and such other development as deemed necessary, the Office shall issue a *de novo* decision.⁹

⁵ A.M.A., *Guides* 573.

⁶ *T.H.*, 58 ECAB ____ (Docket No. 06-1500, issued January 31, 2007).

⁷ Dr. Rodriguez erroneously indicated in his report that 20 degrees of flexion yielded three percent impairment.

⁸ *Richard E. Simpson*, 55 ECAB 490 (2004).

⁹ *See Robert F. Hart*, 36 ECAB 186 (1984).

CONCLUSION

The Board finds this case is not in posture for decision on whether appellant has more than a three percent permanent impairment of his left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: February 20, 2008
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