



In a report dated January 8, 2007, Dr. Macey noted that he had previously rated appellant a six percent impairment of the whole person based on loss of motion and loss of strength, in January 2004. He stated:

“[Appellant] recently completed a Cybex testing of the left shoulder, the results are enclosed. This was accomplished on December 7, 2006. According to these results; on the left shoulder isometric strength testing at 45 degrees the left shoulder is about 50 percent weaker than a normal person for his size and age. This is also due to a rotator cuff surgery on the [left] shoulder. For power testing, he was 28.7 percent less on the left than the right. For endurance testing, he was 33.9 percent less on the left than the right and once again these are compared to the right shoulder which also has decreased strength and endurance from previous injury and surgery to that shoulder. This is a permanent loss of strength and motion in the shoulder.”

In a report dated July 10, 2006, Dr. Macey found that appellant had adduction of 150 degrees, flexion of 150 degrees and internal rotation of 60 degrees.

On January 11, 2007 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left upper extremity.

In a report dated January 18, 2007, an Office medical adviser found that appellant had a five percent impairment based on a left shoulder range of motion deficit. He calculated a one percent impairment based on 150 degrees of abduction pursuant to Figure 16-43 at page 476 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition); a two percent impairment based on 150 degrees of flexion pursuant to Figure 16-40 at page 476 of the A.M.A., *Guides*; and a two percent impairment for left shoulder internal rotation pursuant to Figure 16-46 at page 479 of the A.M.A., *Guides*, for a total five percent left upper extremity impairment.

By decision dated February 8, 2007, the Office granted appellant a schedule award for five percent impairment of the left upper extremity, for the period July 10 to October 27, 2006, for a total of 15.6 weeks of compensation.

On February 14, 2007 appellant requested reconsideration. He stated in a letter dated February 14, 2007 that Dr. Macey’s July 10, 2006 report contained clerical errors which he had corrected in a February 14, 2007 report accompanying the reconsideration request. In his report, Dr. Macey stated:

“There is an addendum to [the July 10, 2006 report] showing that flexion is 150 degrees; it is actually 140 degrees, abduction is 150 degrees, internal rotation is 60, external rotation is listed as 90 degrees. Actively he only has 30 degrees of active external rotation.”

In a report dated March 12, 2007, an Office medical adviser found that appellant had a seven percent impairment based on a left shoulder range of motion deficit. He calculated a three percent impairment based on 150 degrees of forward elevation pursuant to Figure 16-40 at page

476 of the A.M.A., *Guides*; one percent impairment based on 150 degrees of adduction pursuant to Figure 16-43 at page 476 of the A.M.A., *Guides*; a two percent impairment for left shoulder internal rotation pursuant to Figure 16-46 at page 479 of the A.M.A., *Guides*; and a one percent impairment for left shoulder external rotation pursuant to Figure 16-46 at page 479 of the A.M.A., *Guides*, for a total seven percent left upper extremity impairment.

By decision dated May 10, 2007, the Office vacated the February 8, 2007 award. It found that appellant had seven percent impairment of the left arm, for the period October 28 to December 10, 2006, for a total of 6.24 weeks of compensation.

On May 29, 2007 appellant requested reconsideration. He submitted a copy of the Office medical adviser's March 12, 2007 report and a copy of section 16 of the A.M.A., *Guides* at pages 507 and 508. Appellant did not submit any new medical evidence.

By decision dated July 6, 2007, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>2</sup> However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

The Office medical adviser rated appellant at seven percent impairment of the left arm utilizing the loss of range of motion findings of Dr. Macey, the treating physician, and applying them to the applicable figures of the A.M.A., *Guides*. He calculated a three percent impairment based on 150 degrees of forward elevation pursuant to Figure 16-40 at page 476 of the A.M.A., *Guides*; one percent impairment based on 150 degrees of adduction pursuant to Figure 16-43 at page 476 of the A.M.A., *Guides*; a two percent impairment for left shoulder internal rotation pursuant to Figure 16-46 at page 479 of the A.M.A., *Guides*; and a one percent impairment for

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 5 U.S.C. § 8107(c)(19).

<sup>3</sup> 20 C.F.R. § 10.404.

left shoulder external rotation pursuant to Figure 16-46 at page 479 of the A.M.A., *Guides*. These findings were proper and in conformance with the applicable tables of the A.M.A., *Guides*.<sup>4</sup> Dr. Macey, who submitted the only other medical opinion of record, listed findings and measurements based on his examination, but did not render an impairment rating based on the A.M.A., *Guides*. The Board finds that the Office medical adviser's opinion constitutes the weight of medical opinion.<sup>5</sup> The Board will affirm the May 10, 2007 schedule award decision. There is no other medical evidence establishing that appellant sustained greater permanent impairment. The Board finds that appellant has no more than a seven percent impairment of the left arm.

### **LEGAL PRECEDENT -- ISSUE 2**

Pursuant to 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>6</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>7</sup>

### **ANALYSIS -- ISSUE 2**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. Appellant did not submit relevant and pertinent evidence not previously considered by the Office. He did not submit any additional medical evidence in connection with his May 29, 2007 reconsideration request. Thus, the request did not contain any new and relevant evidence for the Office to review. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.

### **CONCLUSION**

The Board finds that appellant has no more than a seven percent impairment of the left arm. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

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<sup>4</sup> These findings for loss of range of motion are supported by the figures and tables referenced in subchapter 16.4i, "Shoulder Motion Impairment," at pages 474-79 of the A.M.A., *Guides*.

<sup>5</sup> The May 10, 2007 schedule award decision states that the award is for the left arm. Nonetheless, the Office stated in that decision that it was issuing an additional award of two percent, greater than the five percent initially awarded for the left upper extremity.

<sup>6</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>7</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 6 and May 10, 2007 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: January 3, 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