



## FACTUAL HISTORY

This case has previously been before the Board on appeal. On March 10, 2003 appellant, then a 35-year-old automation clerk, sustained an injury to her right shoulder while lifting in the performance of duty. She also alleged that she hit her right elbow on the machine. By decision dated July 25, 2003, the Office accepted appellant's claim for partial right rotator cuff tear. On August 19, 2003 she underwent a Neer acromioplasty and repair of rotator cuff on the right. Appellant's attending physician, Dr. J. Wayne Keeling, a Board-certified orthopedic surgeon, found that she had reached maximum medical improvement on March 2, 2004 and opined that she had 10 percent impairment of her right upper extremity. Appellant requested a schedule award on March 17, 2004. By decision dated October 14, 2004, the Office granted her a schedule award for three percent impairment of her right upper extremity. Appellant requested an appeal before the Board. By decision dated June 9, 2005,<sup>1</sup> the Board affirmed the Office's October 14, 2004 decision finding that the weight of the medical opinion evidence established that appellant had no more than three percent impairment of her right upper extremity. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

On April 5, 2005 appellant underwent surgery of the right rotator cuff using a biodegradable surgical anchor. The Office entered her on the periodic rolls on July 13, 2005. Appellant requested an additional schedule award on November 7, 2005. By decision dated May 19, 2006, the Office granted appellant a schedule award for an additional 17 percent impairment of her right upper extremity.

On November 29, 2006 the Office interrupted appellant's schedule award and reentered her on the periodic rolls due to a recurrence of disability. Appellant's March 5, 2007 arthrogram revealed an additional full-thickness rotator cuff tear on the right. In a letter dated April 30, 2007, she stated that she did not wish to undergo additional surgery and instead requested an impairment rating. On May 2, 2007 appellant informed the Office that she wished to elect Office of Personnel Management benefits and receive the remainder of her schedule award.

In a note dated May 16, 2007, Dr. Keeling provided appellant's range of motion for the right shoulder as 55 degrees of flexion, 40 degrees of extension, 40 degrees of adduction, 40 degrees of abduction, 30 degrees of internal rotation and 45 degrees of external rotation. He concluded that appellant had 28 percent impairment of her right upper extremity due to loss of range of motion.

The Office medical adviser applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>2</sup> to the range of motion figures provided by Dr. Keeling on June 7, 2007 and determined that appellant had 19 percent impairment of the right upper extremity by combining impairment for the range of motion figures provided by Dr. Keeling.

---

<sup>1</sup> Docket No. 05-661 (issued June 9, 2005).

<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2000).

Appellant requested a schedule award. By decision dated July 11, 2007, the Office denied her request for an additional schedule award on the grounds that the weight of the medical opinion evidence as represented by the Office medical examiner established that she had no more than 19 percent impairment of her right upper extremity. She was not entitled to additional schedule award as she had previously received schedule awards totaling 20 percent.

Appellant requested reconsideration of the Office's July 11, 2007 decision on July 14, 2007 and alleged an error in the Office medical adviser's report. She stated that she was entitled to a schedule award based on an impairment rating of 21 percent rather than 19 percent as found by the Office medical adviser. Appellant resubmitted Dr. Keeling's May 16, 2007 report as well as the June 6, 2007 report of the Office medical adviser.

By decision dated July 26, 2007, the Office declined to reopen her claim for consideration of the merits on the grounds that she failed to submit relevant and pertinent new evidence.

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

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulations<sup>4</sup> 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 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>6</sup>

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

Appellant's attending physician, Dr. Keeling, a Board-certified orthopedic surgeon, provided a report dated May 16, 2007 which listed appellant's range of motion in the right shoulder. However, he did not properly correlate his findings with the A.M.A., *Guides* in reaching his impairment rating of 29 percent. The Office medical adviser applied the appropriate provisions of the A.M.A., *Guides* to reach the individual impairments accorded for each loss of range of motion. He properly found that the A.M.A., *Guides* provide that 55 degrees of flexion is nine percent impairment and that 40 degrees of extension is one percent impairment of the

---

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

right upper extremity.<sup>7</sup> The A.M.A., *Guides* provide that 40 degrees of adduction is not a ratable impairment and that 40 degrees of abduction is six percent impairment.<sup>8</sup> In accordance with the A.M.A., *Guides*, 30 degrees of internal rotation is four percent impairment and 45 degrees of external rotation is one percent impairment of the right upper extremity.<sup>9</sup> However, the A.M.A., *Guides* provide, “The upper extremity impairment resulting from abnormal shoulder motion is calculated from the pie charts by *adding* directly the upper extremity impairment values contributed by each motion unit.”<sup>10</sup> (Emphasis in the original.) The Office medical adviser improperly reached his impairment rating of 19 by combining the impairments for loss of range of motion of the shoulder rather than adding the impairments. In accordance with the provisions of the A.M.A., *Guides* appellant has 21 percent impairment of her right upper extremity due to loss of range of motion rather than 19 percent impairment as found by the Office medical adviser. She has already received schedule awards totaling 20 percent impairment of her right upper extremity. On return of the record, the Office should issue an appropriate decision granting appellant a schedule award for an additional one percent impairment of her right upper extremity.<sup>11</sup>

### CONCLUSION

The Board finds that appellant has 21 percent impairment of her right upper extremity.

---

<sup>7</sup> A.M.A., *Guides* 476, Figure 16-40.

<sup>8</sup> *Id.* at 477, Figure 16-43.

<sup>9</sup> *Id.* at 479, Figure 16-46.

<sup>10</sup> *Id.* at 474.

<sup>11</sup> Due to the disposition of this issue, the Office’s July 26, 2007 nonmerit decision is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 11, 2007 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: March 20, 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