

orthopedic surgeon. On November 24, 2003 Dr. Sonnenberg stated that appellant reported pain and stiffness at the base of her skull but did not have radicular symptoms in her arms.¹ On April 23, 2004 she underwent a functional capacity evaluation.

In late 2005 appellant returned to her regular work for the employing establishment. On October 12, 2005 Dr. Sonnenberg stated that appellant reported that she had occasional pain in her neck but did not have radicular symptoms in her arms. He indicated that she had reached maximum medical improvement. On June 16, 2006 appellant filed a claim for a schedule award due to her accepted conditions.

On July 24, 2006 Dr. Sonnenberg performed an evaluation of appellant's permanent impairment. He stated that she had full range of her arms and neck and noted, "[T]he only disability at this time is pain and discomfort in her neck and upper back. I rate this at a two percent disability." Dr. Sonnenberg indicated that in each arm appellant had 180 degrees of flexion, 50 degrees of extension, 170 degrees of abduction, 40 degrees of adduction, 80 degrees of internal rotation and 90 degrees of external rotation. He stated that appellant did not have any weakness or atrophy in her upper extremities. Dr. Sonnenberg indicated that appellant had reached maximum medical improvement by July 24, 2006.

On September 3, 2007 Dr. David H. Garelick, a Board-certified orthopedic surgeon who served as an Office medical adviser, reviewed the medical evidence of record including the July 24, 2006 impairment evaluation of Dr. Sonnenberg. Dr. Garelick discussed appellant's limited findings on examination and diagnostic testing² and concluded that the medical evidence did not establish that she had any permanent impairment of her arms.³

In an October 10, 2007 decision, the Office denied appellant's schedule award claim on the grounds that she did not submit medical evidence establishing that she had permanent impairment of her arms. It indicated that Dr. Sonnenberg did not show how his opinion that appellant had a two percent impairment due to pain was derived in accordance with the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

Appellant requested a hearing before an Office hearing representative. At the February 15, 2008 hearing, appellant asserted that Dr. Garelick only based his opinion on his interpretation of her April 23, 2004 functional capacity evaluation. She submitted several medical reports which primarily addressed her cervical condition, but did not provide any impairment rating.

¹ Diagnostic testing from this period showed a bulging disc at C5-6 without herniation or nerve root impairment.

² Dr. Garelick indicated that diagnostic testing showed a bulging disc at C5-6 but no herniation or nerve root impairment.

³ Dr. Garelick discussed appellant's April 23, 2004 functional capacity evaluation and indicated that it suggested the existence of self-limiting factors in her condition. He indicated that appellant reached maximum medical improvement on April 23, 2004.

In a May 1, 2008 decision, the Office hearing representative affirmed the October 10, 2007 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ 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.⁶

ANALYSIS

The Office accepted that on July 18, 2003 appellant sustained cervical, left shoulder and left arm strains due to a dog attack while she was delivering mail. On June 16, 2006 appellant filed a claim for a schedule award due to her accepted conditions. The Board finds that appellant did not submit sufficient medical evidence to show that she sustained permanent impairment of her arms.

On July 24, 2006 Dr. Sonnenberg, an attending Board-certified orthopedic surgeon, performed an evaluation of appellant's permanent impairment. He stated that she had full range of her arms and neck and noted, "[T]he only disability at this time is pain and discomfort in her neck and upper back. I rate this at a two percent disability."⁷ He stated that appellant did not have any weakness or atrophy in her upper extremities.

The Board notes that the opinion of Dr. Sonnenberg does not provide probative evidence that appellant had a permanent impairment of her arms. The range of motion findings reported on examination would not warrant an impairment rating based on limited arm motion and there is no evidence that appellant had arm weakness.⁸ With respect to Dr. Sonnenberg's assertion that appellant had two percent impairment due to pain, this opinion is of limited probative value. Dr. Sonnenberg failed to provide an explanation of how his assessment of permanent impairment

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.*

⁷ Dr. Sonnenberg indicated that in each arm appellant had 180 degrees of flexion, 50 degrees of extension, 170 degrees of abduction, 40 degrees of adduction, 80 degrees of internal rotation and 90 degrees of external rotation.

⁸ A.M.A., *Guides* 476-77, 497, Figures 16-40, 16-43 and 16-46.

was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.⁹

On September 3, 2007 Dr. Garelick, a Board-certified orthopedic surgeon who served as an Office medical adviser, stated that he had reviewed the medical evidence of record including the July 24, 2006 impairment evaluation of Dr. Sonnenberg. He discussed appellant's limited findings on examination and diagnostic testing and properly concluded that the medical evidence did not show that she had permanent impairment of her arms. As the report of the Dr. Garelick provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.¹⁰ Appellant did not meet her burden of proof to submit medical evidence showing that she had permanent impairment of her arms and the Office properly denied her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had permanent impairment of her arms which would entitle her to schedule award compensation.

⁹ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment). Dr. Sonnenberg did not make reference to the portions of the A.M.A., *Guides* relevant to evaluating upper extremity pain, whether associated with a specific nerve root or not. See generally Chapters 15, 16 and 19 of the A.M.A., *Guides*.

¹⁰ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989). Appellant asserted that Dr. Garelick only based his opinion on his interpretation of her April 23, 2004 functional capacity evaluation. However, his opinion was actually based on the fact that there was no probative medical evidence in the record showing permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 1, 2008 and October 10, 2007 decisions are affirmed.

Issued: January 14, 2009
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