



On September 11, 2007 appellant filed a schedule award claim. The Office requested that her attending physician, Dr. Eric Grigsby, provide an opinion as to permanent impairment; however, no relevant evidence was submitted. Appellant was referred to Dr. Alan Kimelman, a physiatrist. In a report dated October 26, 2007, Dr. Kimelman provided a history and results on examination. He noted that appellant had undergone right shoulder surgery in 1999 and 2003. With respect to range of motion, Dr. Kimelman provided results for flexion, extension, adduction, abduction, internal and external rotation. He reported that appellant's right arm developed numbness and pain when unsupported, with sensation reduced in a nondermatomal distribution. Dr. Kimelman found no evidence of carpal tunnel syndrome, neuropathy or cervical radiculopathy in the arms. He noted reduced strength (4/5) in the shoulder rotators and abductor muscles. Dr. Kimelman measured both shoulders at 27 centimeters.

In a report dated May 27, 2008, an Office medical adviser reviewed the medical evidence. For the right shoulder, the medical adviser opined that appellant had three percent impairment for loss of flexion and two percent for loss of abduction. In addition, the medical adviser found 10 percent impairment for a distal clavicle resection arthroplasty surgery. The date of maximum medical improvement was October 26, 2007.

By decision dated June 10, 2008, the Office issued a schedule award for 15 percent right arm permanent impairment. The period of the award was 46.80 weeks from October 26, 2007.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>3</sup>

### **ANALYSIS**

With respect to the right arm, the Office found appellant had 15 percent permanent impairment, based on the Office medical adviser's review of Dr. Kimelman's October 26, 2007 report. Dr. Kimelman reported 140 degrees of shoulder flexion and 135 degrees of abduction. Under the A.M.A., *Guides* the loss of flexion is three percent arm impairment, while the loss of abduction is two percent impairment.<sup>4</sup> The remainder of the range of motion findings, 50 degrees extension, 40 degrees adduction, 80 degrees internal rotation and 90 degrees external

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<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>3</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>4</sup> A.M.A., *Guides* 476, 477, Figures 16-40 and 16-43.

rotation, do not result in any ratable impairment.<sup>5</sup> The Office medical adviser found appellant had five percent arm impairment for loss of range of motion.

The Office medical adviser then utilized Table 16-27, providing 10 percent arm impairment for a distal clavicle arthroplasty.<sup>6</sup> On appeal, appellant argues that the schedule award did not include pain, atrophy and weakness. The Board notes that separate impairments for pain or loss of strength are not to be used for any impairment that can adequately be rated using other methods.<sup>7</sup> As to atrophy, Dr. Kimelman did not describe an atrophy impairment, and the A.M.A., *Guides* does not provide a specific impairment for upper extremity muscle atrophy.<sup>8</sup>

Appellant did not submit a report from an attending physician with complete examination findings and an opinion as to impairment under the A.M.A., *Guides*. The probative medical evidence of record consists of the Office medical adviser's May 27, 2008 report reviewing the findings of Dr. Kimelman. The Office medical adviser provided a rationalized medical opinion that appellant had 15 percent right arm permanent impairment. There is no probative evidence of a greater impairment.

Based on the evidence of record, the Board finds the Office properly determined appellant had 15 percent right arm impairment. The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's permanent impairment in the right arm was 15 percent, he is entitled to 15 percent of 312 weeks, or 46.80 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.<sup>9</sup> In this case the Office medical adviser properly determined that the date of maximum medical improvement was the date of examination by Dr. Kimelman. The award properly runs from October 26, 2007.

### CONCLUSION

The Board finds the evidence of record does not establish more than 15 percent right arm permanent impairment.

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<sup>5</sup> See *id.* at 479, Figure 16-46.

<sup>6</sup> *Id.* at 506, Table 16-27.

<sup>7</sup> *Id.* at 508, 571.

<sup>8</sup> Muscle atrophy is not rated separately, although it can be an objective sign of motor dysfunction. The A.M.A., *Guides* also states that an impairment for motor deficit from peripheral nerve disorders must be based on a diagnosed injury of a specific nerve. *Id.* at 484.

<sup>9</sup> *Albert Valverde*, 36 ECAB 233, 237 (1984).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 10, 2008 is affirmed.

Issued: July 24, 2009  
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