

decompression, resection of the distal clavicle and debridement of the rotator cuff and posterior and superior labrum.

In a report dated April 11, 2006, Dr. Jason Brokaw, an attending Board-certified physiatrist, calculated that appellant had five percent whole body impairment due to decreased range of motion of the cervical spine, based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*).¹

On June 13, 2006 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and an Office medical adviser, reviewed the April 11, 2006 report from Dr. Brokaw and calculated that appellant had one percent right upper extremity impairment, based on Grade 4 sensory deficit and the A.M.A., *Guides*.²

By decision dated June 26, 2006, the Office granted appellant a schedule award based on one percent right upper extremity for 3.12 weeks, from May 5 to 26, 2005.³

In a February 27, 2008 report, Dr. Gary W. Pushkin, a Board-certified orthopedic surgeon, stated that appellant had well-healed arthroscopic portals in his right shoulder from his surgery. There was no atrophy. There was some anterolateral tenderness. Range of motion was 90 to 150 degrees with pain. Appellant had a positive drop arm test. He had good abduction strength but weakness with external rotation. Appellant had discomfort with reaching back. Dr. Puskin calculated 15 percent right upper extremity impairment based on “Table 16-43” and Table 16-11 of the A.M.A., *Guides*.⁴

On May 9, 2008 Dr. Berman reviewed the February 27, 2008 report of Dr. Pushkin. He stated that the only abnormality indicated in Dr. Pushkin’s physical findings was pain with 90 to 150 degrees of range of motion. Because there is no Table 16-43 in the A.M.A., *Guides*, he applied the range of motion findings to Figure 16-43 at page 477 regarding range of motion measurements for adduction and abduction which provides for four percent impairment for 90 degrees of abduction. There is no impairment for 150 degrees of adduction.

¹ The Board notes that neither the Federal Employees’ Compensation Act nor the implementing regulations provide for a schedule award for loss of use of the back or to the body as a whole. See *Guiseppa Aversa*, 55 ECAB 164, 167 (2003). No schedule award is payable for a member, function or organ of the body not specified under the Act or the implementing regulations. See *J.Q.*, 59 ECAB ___ (Docket No. 06-2152, issued March 5, 2008). However, the schedule award provisions of the Act include the extremities and a claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of such impairment originates in the spine. See *Vanessa Young*, 55 ECAB 575 (2004).

² See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

³ The Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the upper extremity. 5 U.S.C. § 8107(c)(10). Multiplying 312 weeks by one percent equals 3.12 weeks of compensation.

⁴ There is no Table 16-43 in the A.M.A., *Guides*.

By decision dated June 2, 2008, the Office granted appellant a schedule award for an additional four percent right upper extremity impairment, or 12.48 weeks, from February 27 to May 24, 2008.⁵

LEGAL PRECEDENT

Section 8107 of the Act⁶ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁷

ANALYSIS

By decision dated June 26, 2006, appellant received a schedule award for one percent impairment to his right upper extremity based on sensory deficit. On June 2, 2008 the Office granted a schedule award for an additional four percent right upper extremity impairment for decreased range of motion. The Board finds that further development of the medical evidence is required.

Dr. Pushkin stated that appellant had no atrophy of his right shoulder. There was some anterolateral tenderness. Range of motion was 90 to 150 degrees with pain. Appellant had a positive drop arm test. He had good abduction strength but weakness with external rotation. Appellant had discomfort with reaching back. Dr. Puskin calculated 15 percent right upper extremity impairment based on Table 16-43 of the A.M.A., *Guides* and Table 16-11. Because there is no Table 16-43, it appears that he meant Figure 16-43 at page 477 which provides four percent impairment for 90 degrees of abduction. Table 16-11 at page 484 involves upper extremity motor deficit due to peripheral nerve disease. However, Dr. Pushkin did not explain how he calculated impairment to appellant's right upper extremity impairment based on Table 16-11. Additionally, Dr. Pushkin did not provide specific range of motion measurements for appellant's right shoulder external and internal rotation, and flexion and extension. Therefore, his report lacks complete physical findings and is not sufficient to establish the degree of appellant's right upper extremity impairment. Because Dr. Berman calculated appellant's impairment based on the incomplete report of Dr. Brokaw, his report is insufficient to establish appellant's right upper extremity impairment. Therefore, the issue of his right upper extremity requires further development of the medical evidence.

On remand, the Office should obtain a supplemental report from Dr. Brokaw with complete physical findings, including full range of motion measurements regarding appellant's shoulder. Dr. Brokaw should explain his determination that appellant has impairment based on Table 16-11. An Office medical adviser should then apply the findings in Dr. Brokaw's report to

⁵ As noted, the Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the upper extremity. 5 U.S.C. § 8107(c)(10). Multiplying 312 weeks by four percent equals 12.48 weeks of compensation.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

the A.M.A, *Guides* and calculate appellant's right upper extremity impairment. After such further development as it deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required on the issue of appellant's right upper extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 2, 2008 is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: May 8, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board