

disorder and pain disorder associated with psychological factors and a general medical condition.¹ She has undergone three Office-approved surgical procedures involving the right upper extremity. Appellant's latest surgery occurred on April 16, 2002 and involved the right shoulder.²

On February 6, 2008 appellant filed a claim for a schedule award. The Office subsequently received a February 13, 2008 report from appellant's treating physician, Dr. Rommel G. Childress, a Board-certified orthopedic surgeon, who found 37 percent impairment of the right upper extremity and 12 percent impairment of the left upper extremity. The overall right upper extremity rating included a combination of impairments for loss of motion in the shoulder (16 percent) and wrist (2 percent). It also included motor and sensory deficits involving both the median (10 percent) and ulnar (17 percent) nerves. With respect to the left upper extremity, Dr. Childress combined two percent impairment for loss of motion in the wrist with five percent impairment each for motor and sensory deficits involving the median and ulnar nerves. Appellant reportedly had reached maximum medical improvement on April 7, 2005. Dr. Childress also noted that there was a ratable impairment with respect to appellant's psychiatric diagnoses. However, he preferred that a psychiatrist provide that specific rating.

On March 10, 2008 the Office's district medical adviser reviewed Dr. Childress' recent impairment rating and concurred with his finding of 37 percent right upper extremity impairment and 12 percent left upper extremity impairment. The district medical adviser found that appellant reached maximum medical improvement on February 13, 2008; the date of Dr. Childress' impairment rating.

On August 7, 2008 the Office granted appellant a schedule award for 37 percent impairment of the right upper extremity and 12 percent impairment of the left upper extremity. The award covered a period of 152.88 weeks.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.³ No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations.⁴ The Act's list of scheduled members includes the eye, arm, hand, fingers, leg, foot and toes.⁵ Additionally, the

¹ Appellant has another occupational disease claim (xxxxxx482) that was accepted for left wrist tendinitis, which has been combined with the current claim. She also has an accepted claim (xxxxxx712) for prolonged depressive disorder, which arose on or about May 15, 2001.

² In addition to her April 16, 2002 right shoulder arthroscopic debridement, appellant underwent a right ulnar nerve release on January 29, 2002 and a right carpal tunnel release on August 22, 2000.

³ For a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2006).

⁴ *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

⁵ 5 U.S.C. § 8107(c).

Act specifically provides for compensation for loss of hearing and loss of vision.⁶ By authority granted under the Act, the Secretary of Labor added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the list of scheduled members.⁷

The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁸ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁹

ANALYSIS

The Board finds that the case is not in posture for decision. In his February 13, 2008 report, Dr. Childress referenced various tables and figures from the A.M.A., *Guides* (5th ed. 2001) that he purportedly relied upon in determining appellant's bilateral upper extremity impairment. However, it is not readily apparent from his report how Dr. Childress calculated a right upper extremity impairment of 37 percent and a left upper extremity impairment of 12 percent. Moreover, the district medical adviser's March 10, 2008 report offers even less insight into this particular process. He simply concluded without explanation that Dr. Childress' impairment rating is consistent with the A.M.A., *Guides* and "is correct." To the extent the district medical adviser believes that Dr. Childress' impairment rating is correct, it is incumbent upon the district medical adviser to explain how he arrived at this conclusion and provide specific references to the relevant sections of the A.M.A., *Guides* that support such a conclusion. Under the circumstances, the district medical adviser's mere concurrence will not suffice. Accordingly, the case shall be remanded to the Office to obtain clarification from the district medical adviser regarding the extent of any permanent impairment affecting appellant's upper extremities.

Appellant raised a number of arguments on appeal, none of which are compelling. However, one particular point warrants further mention. Appellant argued that her psychiatric conditions are ratable, presumably relying on a similar remark by Dr. Childress. While the A.M.A., *Guides* (5th ed. 2001) includes an impairment rating scheme for mental and behavioral disorders, the Act does not authorize schedule awards for emotional conditions.¹⁰

⁶ *Id.*

⁷ 5 U.S.C. § 8107(c)(22); 20 C.F.R. § 10.404(a) (2008).

⁸ 20 C.F.R. § 10.404.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

¹⁰ *Jacqueline S. Harris*, 54 ECAB 139, 141 (2002).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2008 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further action consistent with this decision.

Issued: September 4, 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