

arthroscopic repair of a partial thickness tear of the supraspinatus tendon and an open bursectomy, approved by the Office. Appellant returned to limited duty on May 5, 2009. She participated in physical therapy through July 9, 2009.

On August 5, 2009 appellant claimed a schedule award. The record demonstrates that she had previously received schedule awards for impairment of the left upper extremity, 16 percent on January 10, 2005 under File No. xxxxxx835 related to a 2004 subacromial decompression and an additional 3 percent on November 15, 2007 under File No. xxxxxx128.

In an August 6, 2009 letter, the Office advised appellant of the evidence needed to establish her schedule award claim, including an attending physician's report finding she had attained maximum medical improvement, a detailed description of the impairment and a schedule award rating according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A., *Guides*").

Dr. Rafat Nashed, an attending Board-certified orthopedic surgeon, released appellant from care on July 28, 2009 with permanent work restrictions. He performed a schedule award evaluation on August 27, 2009, noting that she had reached maximum medical improvement. Dr. Nashed noted 150 degrees passive forward flexion and 20 degrees active forward flexion, 170 degrees passive abduction and 90 degrees active abduction. He utilized the active ranges of motion to determine the percentage of upper extremity impairment. Referring to the fifth edition of the A.M.A., *Guides*, Dr. Nashed found a 22 percent impairment of the left upper extremity as follows: 6 percent for flexion limited to 150 degrees according to Figure 16-40; 2 percent for extension limited to 20 degrees; 4 percent for 90 degrees abduction according to Figure 16-43; 1 percent for external rotation limited to 45 degrees; 9 percent for a 50 percent loss of strength according to Table 16-35, page 510.

Appellant experienced increased left shoulder pain in late August 2009. On September 1, 2009 Dr. Nashed referred her to a pain management specialist. In an October 30, 2009 report, he opined that appellant reached maximum medical improvement and released her from care.

On November 4, 2009 the Office referred the medical record and a statement of accepted facts to an Office medical adviser for an impairment evaluation. In a November 26, 2009 report, Dr. Daniel D. Zimmermen, an Office medical adviser, opined that appellant reached maximum medical improvement as of August 27, 2009. He found that Dr. Nashed improperly based his rating on limited motion despite the significant difference between active and passive ranges of motion. Dr. Zimmermen explained that section 15.7a of the A.M.A., *Guides*, entitled "Clinical Measurements of Motion," directs that in the presence of such disparities, the practitioner should utilize Table 15-5, the Shoulder Regional Grid, at pages 401 to 405 of the sixth edition of the A.M.A., *Guides*. He noted that, although the Office accepted a full-thickness rotator cuff tear, surgery demonstrated only a partial tear of the supraspinatus tendon. According to the Shoulder Regional Grid, a partial rotator cuff tear equaled a Class 1 impairment, permitting a five percent impairment rating for residual functional loss with normal motion. The five percent rating precluded modification by *QuickDASH* or activities of daily living questionnaires and there was no rating allowable for bursitis. Dr. Zimmerman concluded that appellant had a 5 percent impairment of the left upper extremity, less than the 16 percent previously awarded.

By decision dated December 2, 2009, the Office denied appellant's claim for an additional schedule award claim, based on the Office medical adviser's report.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act¹ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.² For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.³

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁴ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).⁵ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS

With respect to the left upper extremity, Dr. Nashed stated in his August 27, 2009 report that appellant had a 22 percent left upper extremity impairment due to restricted motion. However, he relied on the fifth edition of the A.M.A., *Guides* and not the sixth edition of the A.M.A., *Guides* in effect as of May 1, 2009.

Dr. Zimmerman reviewed Dr. Nashed's report. He assessed a five percent or Class 1 impairment of the left upper extremity according to Table 15-5. Dr. Zimmerman explained that Dr. Nashed had misapplied the A.M.A., *Guides* by basing the impairment rating on restricted motion despite wide disparities in active and passive mobility.

The Board finds that Dr. Zimmerman properly applied the appropriate tables and grading schemes to Dr. Nashed's clinical findings. Dr. Zimmerman provided a well-rationalized

¹ 5 U.S.C. §§ 8101-8193.

² *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

³ FECA Bulletin 09-03, (issued March 15, 2009).

⁴ A.M.A., *Guides* (6th ed. 2008), page 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

⁵ *Id.* at 494-531.

explanation of why appellant had no greater than a 5 percent impairment of the left upper extremity, less than the 16 percent previously awarded. The Board finds that the Office properly relied on the medical adviser's interpretation of Dr. Nashed's findings as the weight of the medical evidence.

On appeal, counsel contends that the December 2, 2009 decision is contrary to fact and law. As stated, appellant did not submit sufficient medical evidence to establish she sustained more than the prior 16 percent impairment of the left upper extremity. Therefore, the Office properly denied her claim for an additional schedule award.

CONCLUSION

The Board finds that appellant did not establish that she sustained more than a 16 percent impairment of the left upper extremity, for which she received a schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 2, 2009 is affirmed.

Issued: December 15, 2010
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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