



On November 7, 2008 appellant filed a claim for a schedule award. In a July 17, 2008 impairment evaluation, Dr. David Weiss, an osteopath Board-certified in family practice, discussed appellant's complaints of left shoulder weakness and intermittent stiffness and pain. On physical examination, he measured range of motion of the left shoulder of 170 degrees forward elevation, 180 degrees abduction, 65 degrees adduction, 90 degrees external rotation and internal rotation to T8. Dr. Weiss noted that appellant had no tenderness of the acromioclavicular joint. He performed manual muscle strength testing and found strength of 4/5 of the supraspinatus musculature and full strength of the deltoid, biceps and triceps. Dr. Weiss measured circumference of 36 centimeters on the right and 34 centimeters on the left for the lower arm and circumference of 42.5 centimeters on the right and 40 centimeters on the right for the upper arm. Citing Table 16-11 and Table 16-15 on pages 484 and 492 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*), he found that appellant had a four percent impairment due to a loss of motor strength of the left supraspinatus. Dr. Weiss further determined that he had three percent impairment due to pain using Figure 18-1 on page 574, for a total left upper extremity impairment of seven percent.

An Office medical adviser reviewed the evidence on November 18, 2008. He found that 170 degrees of flexion constituted 1 percent impairment according to Figure 16-40 on page 476 of the A.M.A., *Guides*. The Office medical adviser indicated that the difference in circumference between the right and left sides was normal as appellant was right-hand dominant. He further noted that the A.M.A., *Guides* did not provide an impairment rating for loss of strength with decreased motion or pain. The Office medical adviser found that appellant was not entitled to a permanent impairment due to weakness as he did not have a torn rotator cuff. He found that pain was anticipated after a labral tear. The Office medical adviser stated:

“According to page 570. Section 18.3a *When This Chapter Should Be Used To Evaluate Pain-Related Impairment*, it meets the criteria where it states that there is excessive pain in the context of verifiable medical conditions that cause pain. It is common to have pain following a labral tear, especially with heavy overhead activity as in this claimant, and it is also common to have good range of motion.

“Therefore, there is no other rating that can be granted, and a pain award in this particular instance would be justified at [three percent].”

The Office medical adviser concluded that appellant had one percent permanent impairment of the arm due to loss of motion and three percent impairment due to pain, for a total left upper extremity impairment of four percent.

By decision dated April 2, 2009, the Office granted appellant a schedule award for four percent impairment of the left upper extremity. The period of the award ran for 12.48 weeks from July 17 to October 12, 2008.

On April 13, 2009 appellant, through his attorney, requested an oral hearing. At the August 20, 2009 hearing counsel argued that the Office medical adviser erred in not providing a rating for decreased motor strength as appellant used maximum effort. Appellant also maintained that the accepted condition was expanded to include a torn left shoulder labrum.

By decision dated November 18, 2009, the hearing representative affirmed the April 2, 2009 decision.

On appeal counsel argues that a conflict exists between Dr. Weiss and the Office medical adviser. He further contends that if two methods are available to evaluate the extent of impairment then appellant should receive the more favorable rating.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act,<sup>1</sup> and its implementing federal regulations,<sup>2</sup> 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>3</sup> For decisions issued after February 1, 2001 but before May 1, 2009, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>4</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a left shoulder sprain due to an August 27, 2007 employment injury. He underwent an arthroscopic repair of the labral tear on December 12, 2007.

On November 7, 2008 appellant filed a claim for a schedule award. In an impairment evaluation dated July 17, 2008, Dr. Weiss provided range of motion findings for the left shoulder, measured shoulder circumference and performed manual muscle testing. He found that appellant had a 4/5 motor strength of the supraspinatus musculature which constituted four percent impairment under the A.M.A., *Guides* according to Table 16-15 and Table 16-11.<sup>5</sup> Dr. Weiss, however, did not properly rate impairment due to motor strength deficit using Table 16-15. A proper application of the A.M.A., *Guides* requires that specific nerves be identified under Table 16-15 in order to determine the maximum impairment for sensory or motor deficit in the identified nerve.<sup>6</sup> The impairment is then graded according to Table 16-10

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *Id.* at § 10.404(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). As of May 1, 2009, the sixth edition will be used. FECA Bulletin No. 09-03 (issued March 15, 2009). The Office issued appellant's schedule award by decision dated April 2, 2009; consequently, application of the fifth edition of the A.M.A., *Guides* was proper. The hearing representative affirmed the November 18, 2009 decision without consideration of any new medical evidence.

<sup>5</sup> A.M.A., *Guides* 484, 492, Table 16-11 and Table 16-15.

<sup>6</sup> *Id.* at 492, Table 16-15.

for sensory deficits and 16-11 for motor deficits.<sup>7</sup> These tables provide a grade from one to five according to the severity of the impairment. Dr. Weiss identified the supraspinatus as causing a motor strength deficit but offered no further explanation for his rating under the A.M.A., *Guides*. Dr. Weiss also found three percent impairment due to pain according to Chapter 18, which he added to find seven percent left upper extremity impairment. The Board notes, however, that examiners should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.<sup>8</sup> Dr. Weiss did not explain why appellant's condition could not be adequately rated under Chapter 16. As his rating did not conform to the A.M.A., *Guides*, it is of diminished probative value.<sup>9</sup>

An Office medical adviser reviewed the medical evidence and applied the provisions of the A.M.A., *Guides* to Dr. Weiss' clinical findings. He found that 170 degrees of flexion constituted one percent impairment of the left upper extremity.<sup>10</sup> The Office medical adviser further determined that appellant had no impairment due to atrophy as the difference in circumference between the right and left side resulted from his right-hand dominance. He advised that appellant was not entitled to an impairment for loss of muscle strength as he had no torn rotator cuff weakness anticipated under the A.M.A., *Guides*.<sup>11</sup> The Office medical adviser cited section 16.8(a) of the A.M.A., *Guides*, which limits grip strength evaluations except in rare cases and states that decreased strength cannot be rated in the presence of decreased motion or other conditions that prevent the application of maximal force in the evaluated region.<sup>12</sup> This section, however, would not preclude a motor deficit for an identified peripheral nerve.<sup>13</sup> In this case, however, there is no identified peripheral nerve upon which to base a finding of decreased motor strength. The Office medical adviser found that appellant was entitled to an additional three percent impairment due to pain, noting that Chapter 18 of the A.M.A., *Guides* provided an award for "excessive pain in the context of verifiable medical conditions that cause pain." He explained that a labral tear commonly caused pain especially with overhead activity. The Board finds that the opinion of the Office medical adviser represents the weight of the evidence and establishes that appellant has no more than a four percent permanent impairment of the left upper extremity.

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<sup>7</sup> *Id.* at 482, 484, Table 16-10 and Table 16-11.

<sup>8</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); A.M.A., *Guides* 18.3(b); see also *Philip Norulak*, 55 ECAB 690 (2004).

<sup>9</sup> *Mary L. Henninger*, 52 ECAB 408 (2001).

<sup>10</sup> A.M.A., *Guides* 476, Figure 16-40. The Board notes that shoulder abduction of 180 degrees yields no impairment, 65 degrees adduction yields no impairment, 90 degrees internal rotation yields no impairment and internal rotation to T8 yields no impairment. *Id.* at 477-79, Figures 16-43, 16-46.

<sup>11</sup> *Id.* at 508. The A.M.A., *Guides* indicates that a loss of strength can be rated separately when not adequately considered under other methods and provides as an example "a severe muscle tear that healed leaving a palpable muscle defect."

<sup>12</sup> *Id.*

<sup>13</sup> See *A.M.*, Docket No. 06-1952 (issued February 2, 2007).

On appeal appellant's attorney argues that a conflict exists between Dr. Weiss and the Office medical adviser. As noted, Dr. Weiss did not properly apply the A.M.A., *Guides* and his opinion is insufficient to create a conflict in medical opinion. Counsel also argues that appellant should receive the more favorable rating if two methods can be utilized to determine the extent of impairment. In this case, the Office medical adviser found an impairment due to loss of range of motion and pain. Dr. Weiss found an impairment due to loss of motor strength and pain; but as he did not properly utilize the A.M.A., *Guides* in reaching his rating for loss of motor strength, it reduces the probative value of his opinion on impairment.

**CONCLUSION**

The Board finds that appellant has no more than four percent permanent impairment of the left upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 18, 2009 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 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