

the claim for a closed fracture of the right lower humerus and a right rotator cuff and upper arm sprain. On April 6, 2007 appellant underwent a right shoulder arthroscopic posterior labral debridement, subacromial decompression and rotator cuff repair.

On June 11, 2008 appellant filed a claim for a schedule award. In a report dated September 2, 2009, Dr. Scott Rahhal, a Board-certified orthopedic surgeon, related that she had reached maximum medical improvement from her employment injury and resulting shoulder surgery. Citing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*), he concluded that appellant had a 10 percent permanent impairment of the whole person.

By letter dated October 28, 2009, the Office advised appellant that it was now using the sixth edition of the A.M.A., *Guides* to calculate schedule awards. It requested that Dr. Rahhal provide an impairment evaluation utilizing the sixth edition of the A.M.A., *Guides*. In a December 8, 2009 response, he recommended referring appellant for an evaluation with a physician who used a rating system acceptable to the Office.

On February 1, 2010 the Office referred appellant to Dr. Christopher Jordan, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an impairment evaluation dated February 6, 2010, Dr. Jordan measured range of motion of the right shoulder as 170 degrees abduction, 170 degrees flexion, 80 degrees external rotation, 90 degrees internal rotation, 30 degrees extension and 30 degrees adduction. He found decreased sensation in the right thumb and fifth finger to touch, two millimeter two-point discrimination and a loss of grip and pinch strength on the right. Dr. Jordan noted that appellant denied fracturing her distal humerus. Using Table 15-5 on page 403 of the sixth edition of the A.M.A., *Guides*, he found that she had a class 1 impairment due to a full-thickness rotator cuff tear, which yielded a default value of five. Dr. Jordan applied grade modifiers of three for functional history based on appellant's *QuickDASH* (Disabilities of the Arm, Shoulder and Hand) score of 34 and a grade modifier of zero for physical examination based on symmetrical range of motion without instability. He determined that clinical studies were not applicable. Dr. Jordan found that the default percentage should be increased by one for a six percent permanent impairment of the right upper extremity.

On May 28, 2010 an Office medical adviser concurred with Dr. Jordan's findings. He opined that appellant reached maximum medical improvement on February 6, 2010. Applying the net adjustment formula, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), the Office medical adviser calculated that she should receive a net adjustment up one from the default grade of five, which resulted in a six percent right upper extremity impairment.

By decision dated July 22, 2010, the Office granted appellant a schedule award for a six percent permanent impairment of the right upper extremity. The period of the award ran for 18.72 weeks from February 6 to June 17, 2010.

On appeal, appellant argues that her attending physicians found that she had a 10 percent impairment. She continues to experience pain and will need medication.

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing federal regulations³ 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.⁴ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵

The sixth edition requires identifying 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).⁶ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

ANALYSIS

The Office accepted that appellant sustained a closed fracture of the lower humerus and a sprain of the right rotator cuff and upper arm.⁷ In 2007 appellant underwent a right shoulder posterior labral debridement, subacromial decompression and rotator cuff repair.

In a September 2, 2009 impairment evaluation, Dr. Rahhal found that appellant had a 10 percent whole person impairment under the fifth edition of the A.M.A., *Guides*. The Act, however, does not provide for impairment of the whole person.⁸ Further, the applicable edition of the A.M.A., *Guides* for determining impairments subsequent to May 1, 2009 is the sixth edition. Dr. Rahhal based his impairment finding on the fifth edition of the A.M.A., *Guides*. A medical opinion not based on the appropriate edition of the A.M.A., *Guides* has diminished probative value in determining the extent of a claimant's permanent impairment.⁹

The Office requested that Dr. Rahhal provide an opinion utilizing the sixth edition of the A.M.A., *Guides*; however, he recommended another evaluation. It referred appellant to Dr. Jordan for a second opinion examination. On February 6, 2010 Dr. Jordan measured range

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.* at § 10.404(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁶ A.M.A., *Guides* 494-531.

⁷ Appellant informed Dr. Jordan that she did not fracture her lower humerus.

⁸ *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

⁹ *Fritz A. Klein*, 53 ECAB 642 (2002).

of motion and found a loss of grip and pinch strength. He applied the shoulder regional grade set forth in Table 15-5 of the sixth edition of the A.M.A., *Guides*, which provides that a full-thickness rotator cuff tear yields from a one to seven percent shoulder impairment depending on the class of impairment and grade modifiers. Dr. Jordan used the default percentage for a class 1 impairment due to a full-thickness rotator cuff tear of five percent. He adjusted the impairment by grade modifiers for functional history of three based on appellant's *QuickDASH* score. Dr. Jordan found that she had a grade modifier of zero based on physical examination as range of motion was equal on both sides with no instability. He further found that clinical studies were not applicable. Dr. Jordan concluded that appellant had a six percent right upper extremity impairment.

On May 28, 2010 an Office medical adviser concurred with Dr. Jordan's finding that appellant had a class 1 impairment due to a full-thickness rotator cuff tear with a default value of five. He utilized the net adjustment formula, GMFH-CDX + GMPE-CDX + GMCS-CDX, or (3-1) + (0-1) + (not applicable) to find a net upward adjustment of one or a six percent total impairment of the right upper extremity. There is no medical evidence conforming to the appropriate edition of the A.M.A., *Guides* establishing a greater percentage of impairment.

On appeal, appellant maintains that her attending physician found a 10 percent impairment. As noted, however, Dr. Rahhal did not provide any impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. Thus, his opinion is of little probative value.

Appellant noted that she takes medication for pain due to her work injury. Factors such as limitations on daily activities, however, do not go into the calculation of a schedule award.¹⁰ 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 of the right arm is six percent, she is entitled to six percent of 312 weeks, or 18.72 weeks of compensation.¹¹

CONCLUSION

The Board finds that appellant has no more than a six percent permanent impairment of the right upper extremity.

¹⁰ *E.L.*, 59 ECAB 405 (2008); *Ruben Franco*, 54 ECAB 496 (2003).

¹¹ Appellant retains the right to file a claim for an increased schedule award before the Office based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without exposure to new employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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