



September 29, 2005 OWCP accepted her claim for cervical and right shoulder strains and right shoulder impingement syndrome. Appellant filed a claim for a schedule award on April 19, 2011.

Appellant submitted a July 19, 2010 report from Dr. Michael J. Einbund, a Board-certified orthopedic surgeon. After reviewing her history of injury and medical records, as well as performing a physical examination, Dr. Einbund diagnosed a cervical spine strain with right radicular complaints, impingement syndrome in the right shoulder and probable right trigger thumb. He stated that appellant's condition had reached maximum medical improvement. On examination, the right shoulder revealed 130 degrees abduction, 130 degrees forward flexion, 40 degrees extension, 80 degrees external rotation, 80 degrees internal rotation and 40 degrees shoulder adduction. In determining appellant's impairment ratings, Dr. Einbund applied the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He opined that appellant had six percent whole person impairment with regard to her cervical spine, six percent impairment of the right upper extremity due to decreased range of motion of her right shoulder, three percent impairment of the right upper extremity due to the 4/5 weakness of the right deltoid, as well as a seven percent impairment in the right upper extremity due to the mild triggering of her right thumb. Dr. Einbund concluded that appellant had a whole person impairment of 15 percent.

On June 3, 2011 Dr. Christopher R. Brigham, a Board-certified physician in occupational medicine and OWCP's medical adviser, reviewed appellant's medical record. Based on Dr. Einbund's findings, he concluded that appellant had seven percent permanent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. Appellant had a four percent upper extremity impairment under the diagnosis-based impairment method and a seven percent upper extremity impairment under the range of motion method. Dr. Brigham stated that because the range of motion method yielded a higher rating, it was used to assess impairment in this case. Based on Table 15-34, page 475, of the A.M.A., *Guides*, (6<sup>th</sup> ed. 2009), he determined that appellant had a seven percent impairment of the right upper extremity. Dr. Brigham also determined appellant's date of maximum medical improvement to be July 19, 2010, the date of the evaluation by Dr. Einbund.

In a June 17, 2011 decision, OWCP granted appellant a schedule award for seven percent permanent impairment of the right upper extremity. The period of the award ran from July 19 to December 18, 2010, a total of 21.84 weeks.

### **LEGAL PRECEDENT**

Section 8107 of FECA 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.<sup>3</sup> FECA, 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 A.M.A., *Guides* as the appropriate standard for

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<sup>3</sup> 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).

evaluating schedule losses.<sup>4</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.<sup>5</sup>

With respect to evaluation of shoulder impairments, reference is first made to Table 15-5 (Shoulder Regional Grid). A class of diagnosis may be determined from the Shoulder Regional Grid.<sup>6</sup> Table 15-5 also provides that, if loss of motion is present, the impairment may alternatively be assessed using section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with a diagnosis-based impairment.<sup>7</sup>

### ANALYSIS

In support of her schedule award claim, appellant submitted a July 19, 2010 report from Dr. Einbund. The Board finds that impairment rating by Dr. Einbund applied the fifth edition of the A.M.A., *Guides*, rather than the sixth edition. As noted, effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*. A medical opinion not based on the appropriate edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of a claimant's permanent impairment.<sup>8</sup> While appellant challenged the seven percent impairment rating of the right upper extremity, she has not submitted any medical evidence that evaluated her impairment under the sixth edition of the A.M.A., *Guides*.

Dr. Brigham, an OWCP medical adviser, used the physical examination findings of Dr. Einbund to rate appellant's impairment under the sixth edition of the A.M.A., *Guides*. He explained that, if the diagnosis-basis grid was used to rate appellant's impairment of impingement syndrome, utilizing Table 15-5, Table 15-3a and Table 15-7, appellant had a four percent upper extremity impairment. Dr. Brigham also evaluated appellant using the range of motion method. He concluded that appellant had a seven percent impairment of the right upper extremity pursuant to the range of motion stand-alone method at Table 15-34, page 475. Under Table 15-34 page 475, 130 degrees shoulder flexion equals three percent; 40 degrees shoulder extension equals one percent, 130 degrees shoulder abduction equals three percent; 40 degrees shoulder adduction equals zero percent; 80 degrees external rotation equals zero percent; and 80 degrees internal rotation equals zero percent, for seven percent total right upper extremity impairment. The Board finds that Dr. Brigham properly applied the A.M.A., *Guides* to Dr. Einbund's physical examination results to determine that the range of motion method yielded a seven percent impairment rating of the upper right extremity.<sup>9</sup>

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<sup>4</sup> 20 C.F.R. § 10.404 (2011).

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *Id.*, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

<sup>6</sup> See *P.S.*, Docket No. 11-1962 (issued April 17, 2012); see also A.M.A., *Guides* 401-11 (6<sup>th</sup> ed. 2009).

<sup>7</sup> A.M.A., *Guides* 405, Table 15-5.

<sup>8</sup> *Shalanya Ellison*, 56 ECAB 150 (2004).

<sup>9</sup> The Board notes that, pursuant to Table 15-35 and Table 15-36, appellant's rating under Table 15-34 could only increase by an additional one percent, to a maximum five percent award if appellant's grade modifier for functional history was two or three.

The Board finds that the medical adviser's June 3, 2011 impairment rating conforms to the A.M.A., *Guides* (6<sup>th</sup> ed.) and represents the weight of the medical evidence regarding the extent of appellant's permanent impairment. There is no other medical evidence in conformance with the proper edition of the A.M.A., *Guides* showing a greater impairment.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

**CONCLUSION**

Appellant failed to establish that she has greater than seven percent impairment of the right upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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