

percent right lower extremity impairment.¹ The law and the facts of the previous Board decision are incorporated herein by reference.

Subsequent to the Board's September 1, 2005 decision, on October 2, 2005, appellant, through his attorney, requested a schedule award for his upper extremities and resubmitted a copy of an April 28, 2003 functional capacity evaluation administered by Dr. Perry Stein, Board-certified in physical medicine and rehabilitation.² Regarding the left upper extremity, he advised that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ appellant had no sensory deficit but had a C7 motor deficit of 19 percent, or Grade 4, which yielded a 7 percent impairment under the A.M.A., *Guides*. Regarding the right upper extremity, Dr. Stein found that appellant had no sensory deficit but a C5 elbow motor deficit of 41 percent, or Grade 3, which yielded a 12 percent deficit, and a C6 shoulder motor deficit of 36 percent, or Grade 3, which yielded a 13 percent deficit. He then combined these deficits to equal a 23 percent right upper extremity motor impairment. Dr. Stein also found that appellant had right hand grip and pinch strength deficits of 11 percent each which combined for a 21 percent deficit. He combined all appellant's right upper extremity deficits and concluded that he had a total 38 percent impairment.

The Office referred the medical record, including Dr. Stein's report, to an Office medical adviser for an opinion regarding appellant's entitlement to a schedule award. In a November 16, 2005 report, the Office medical adviser noted his review of Dr. Stein's impairment rating. He opined that maximum medical improvement had been reached on March 31, 2003 and, utilizing the A.M.A., *Guides*, agreed with Dr. Stein's analysis and impairment rating that appellant had a seven percent left upper extremity impairment. Regarding the right upper extremity, the Office medical adviser provided analysis under Tables 16-11 and 16-13 of the A.M.A., *Guides*, and advised that appellant had a Grade 3, C5 motor impairment of the elbow which yielded a 10 percent right upper extremity impairment and a Grade 3, C6 shoulder impairment which yielded a 12 percent impairment. He then combined these findings, concluding that appellant had a 21 percent right upper extremity motor impairment. The Office medical adviser also provided an impairment rating for grip and pinch strength deficits on the right, advising that, in accordance with Table 16-34, appellant was entitled to a 10 percent deficit for each impairment, which he combined for a 19 percent strength deficit. He then combined the 21 percent motor deficit with the 19 percent strength deficit to equal a 36 percent right upper extremity deficit.

By decision dated November 18, 2005, appellant was granted a schedule award for a 38 percent right upper extremity impairment and a 7 percent left upper extremity impairment, for a combined 45 percent. The award was for a total of 140.4 weeks, to run from July 12, 2005 to March 20, 2008.

¹ Docket No. 05-787 (issued September 1, 2005).

² The Office had relied on Dr. Stein's evaluation in granting the 36 percent award for appellant's right lower extremity.

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ sets 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. The Act, however, 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 to all claimants, good administrative practice necessitates 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 implementing regulation as the appropriate standard for evaluating schedule losses.⁶

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment.⁷

ANALYSIS

The Board finds that appellant has not established that he is entitled to greater than a seven percent impairment rating for his left upper extremity. In his May 28, 2003 report, Dr. Stein advised that under the fifth edition of the A.M.A., *Guides* appellant had no sensory deficit of the left upper extremity but had a C7 motor deficit of 19 percent, or Grade 4, which would yield a 7 percent impairment. In a November 16, 2005 report, an Office medical adviser agreed with Dr. Stein's conclusion that appellant had a seven percent left upper extremity impairment.

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.⁸ The Office therefore properly referred Dr. Stein's report to an Office medical adviser. Based on Dr. Stein's physical findings, the Office medical adviser assessed appellant's impairments in accordance with the A.M.A., *Guides* and expressed his agreement with Dr. Stein's findings and conclusions regarding the left upper extremity. Table 16-13 of the A.M.A., *Guides* provides that the maximum motor deficit at C7 is 35 percent.⁹ Dr. Stein advised that appellant had a 19 percent left elbow impairment which would be rated as Grade 4 under Table 16-11. This is to be multiplied by the 35 percent found under Table 16-13,¹⁰ which would yield a left upper extremity

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.404.

⁶ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

⁸ See *Thomas J. Fragale*, 55 ECAB ____ (Docket No. 04-835, issued July 8, 2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

⁹ A.M.A., *Guides*, *supra* note 3 at 489.

¹⁰ *Id.* at 484.

impairment of 7 percent. The medical evidence of record therefore establishes that appellant has a seven percent left upper extremity impairment.¹¹

The Board, however, finds the case not in posture for decision regarding appellant's right upper extremity impairment.¹² In assessing appellant's motor deficits on the right, while the Office medical adviser properly referenced Tables 16-11 and 16-13 of the A.M.A., *Guides*, he did not explain why he reduced Dr. Stein's rating of a 12 percent deficit for a Grade 3 C5 elbow impairment from 12 percent to 10 percent. Table 16-13 provides that the maximum motor deficit at C5 is 30 percent.¹³ Dr. Stein advised that appellant had a 41 percent elbow impairment which would be rated as Grade 3 under Table 16-11 and when multiplied by the 30 percent found under Table 16-13,¹⁴ an impairment of 12 percent is found. In his November 16, 2005 report, the Office medical adviser did not reference the 41 percent deficit identified by Dr. Stein. In fact, he did not identify any specific degree of deficit in concluding that appellant had a 10 percent motor deficit of the right elbow. Likewise, regarding appellant's C6 motor deficit of the shoulder, Dr. Stein identified a 36 percent deficit. Under Table 16-13, the maximum for a C6 deficit is 35 percent.¹⁵ Pursuant to Table 16-11, as found by Dr. Stein, when the 36 percent deficit is multiplied by the 35 percent maximum, an impairment of 13 percent is found.¹⁶ Again, the Office medical adviser did not reference the 36 percent shoulder deficit identified by Dr. Stein or identify any specific degree of deficit in finding that appellant had a 12 percent motor deficit of the right shoulder. As the Office medical adviser did not explain why Dr. Stein's findings of 12 and 13 percent motor loss at the elbow and shoulder respectively were incorrect, the case must be remanded for the Office medical adviser to explain his impairment rating for a right upper extremity motor deficit.

Regarding appellant's contention on appeal that appellant is entitled to an additional 21 percent right hand impairment,¹⁷ the Board notes that section 16.8 of the A.M.A., *Guides* provides that strength measurements are functional tests influenced by subjective factors that are difficult to control. The A.M.A., *Guides*, for the most part, is based on anatomic impairment and

¹¹ The Board notes that Dr. Stein referenced tables found on page 424 of the A.M.A., *Guides* and the Office medical adviser referenced tables found in Chapter 16. Tables 15-16 and 15-17 on page 424 are essentially the same as Tables 16-11 and 16-13, found on pages 484 and 489 respectively. A.M.A., *Guides*, *supra* note 3 at 424, 484, 489.

¹² It is unclear why appellant was awarded a 38 percent right upper extremity impairment when the Office medical adviser found a 36 percent right upper extremity impairment. The Board, however, notes that the November 16, 2005 report of the Office medical adviser was barely legible and it was hard to follow his impairment determinations.

¹³ A.M.A., *Guides*, *supra* note 3 at 489.

¹⁴ *Id.* at 484.

¹⁵ *Id.* at 489.

¹⁶ *Id.* at 484.

¹⁷ Counsel referenced Dr. Stein's report. In that report, however, Dr. Stein included the right hand impairment in finding that appellant had a total 38 percent right upper extremity impairment.

does not assign a large role to strength measurements.¹⁸ Section 16.8a states that, only in a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*, can the loss of strength be rated separately. "*Otherwise, the impairment ratings based on objective anatomic findings take precedence.*"¹⁹ (Emphasis in the original.) The Board finds that neither Dr. Stein nor the Office medical adviser explained why this was such a rare case that would qualify as a section 16.8a exception such that appellant would be entitled to an additional impairment rating for loss of grip and pinch strength.²⁰ On remand, therefore, the Office medical adviser should also explain why appellant is entitled to an impairment rating for decreased right upper extremity grip and pinch strength. After such development as may be necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds that appellant has not established that he is entitled to greater than a seven percent impairment of the left upper extremity. The case is not in posture for decision regarding his right upper extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 18, 2005 be affirmed in part and vacated in part and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: August 3, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

¹⁸ A.M.A., *Guides*, *supra* note 3 at 508; *see Mary L. Henninger*, 52 ECAB 408 (2001).

¹⁹ *Id.*

²⁰ *See Phillip H. Conte*, 56 ECAB ____ (Docket No. 04-1524, issued December 22, 2004).