

acromioclavicular joint depression, Mumford arthroplasty and rotator cuff repair by Dr. Robert W. Patti, a Board-certified orthopedic surgeon. Appellant has not returned to work.

In a medical report dated March 21, 2005, Dr. Patti noted:

“The right shoulder is actually doing better. [Appellant] was last seen here approaching a month ago. There are still some complaints of an arc of catching but generally better movement, generally better use and even generally better reaching. [Appellant] finds that occasional twisting, especially quick twisting will bother him and of course there is the arc involved. Last injection clearly helped his movement and he is doing better and he is taking no medicine except Tylenol. Movement is improved from before.

Dr. Patti further noted that “the right glenohumeral joint shows within 10 percent flexion compared to the other side and abduction about the same.”

On May 2, 2005 appellant filed a claim for a schedule award.

By letter dated May 18, 2005, the Office referred appellant to Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated June 16, 2005, Dr. Sherman diagnosed appellant with right shoulder status post surgical repair of a torn rotator cuff and impingement syndrome with some residual limited shoulder motion. Dr. Sherman noted that examination:

“Reveals a 12 [centimeter] long scar over the lateral aspect of the shoulder in addition to arthroscopic scars all of which are well healed and nontender. There is no wasting of the deltoid muscle. There is some limited motion of the right shoulder with pain at the extremes of forward elevation, extension, abduction and external rotation.”

Dr. Sherman measured appellant’s range of motion in the right shoulder as follows: forward elevation 160 degrees, backward elevation 30 degrees, abduction 170 degrees, adduction 40 degrees, internal rotation 80 degrees, external rotation 70 degrees and extension 30 degrees.

On June 24, 2005 the Office referred appellant’s file to the Office medical adviser for an impairment rating. In a report dated July 1, 2005, the Office medical adviser stated:

“For the purposes of the [s]chedule [a]ward, the claimant has one percent impairment for loss of shoulder flexion ([F]igure 16-40/Page 476). The claimant has one percent impairment for loss of shoulder extension (Figure 16-40/[p]age 476). The claimant has one percent impairment for loss of shoulder abduction (Figure 16-43/[p]age 477). This results in a three percent impairment for loss of motion.

“The claimant has Grade 4 pain/decreased sensation that is forgotten with activity [25 percent] (Table 16-10/[p]age 482) of the axillary nerve/deltoid muscle [5]

(Table 16-15/Page 492), resulting in 1 percent impairment of the right upper extremity for pain that is forgotten with activity.

“Utilizing combined values for three percent impairment for loss of motion and one percent impairment for pain which does not interfere with function, this results in a four percent impairment of the right upper extremity.

“As such, [appellant] has a four percent impairment of the right upper extremity. The four percent impairment of the right upper extremity is the sole impairment of the right upper extremity resulting from the accepted work injury of May 10, 2004. The date of maximum medical improvement is January 16, 2005, when [appellant] was seen for evaluation by Dr. Sherman.”

By decision dated August 24, 2005, the Office issued a schedule award for a four percent impairment of the right upper extremity, noting the date of maximum medical improvement as January 16, 2005.

On September 13, 2005 appellant requested review of the written record. Appellant alleged that Dr. Sherman did “no measuring of the right arm or shoulder” and “got the dates all wrong.”

By decision dated December 29, 2005, the Office determined that it erroneously identified the date of maximum medical improvement. It modified the August 24, 2005 schedule award to reflect that the date of maximum medical improvement was June 16, 2005, the date Dr. Sherman examined appellant. The remainder of the schedule award was not disturbed.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² 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. 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 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*, has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

ANALYSIS

Appellant’s treating physician, Dr. Patti, did not provide an evaluation of appellant’s impairment under the protocols of the A.M.A., *Guides* but merely provided general range of

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404 (2004).

³ See *id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

motion findings. The Office referred appellant to Dr. Sherman for a second opinion. Dr. Sherman obtained measurements with regard to appellant's range of motion and discussed his postsurgical condition. However, Dr. Sherman did not provide a rating of impairment under the A.M.A., *Guides*. The case record was forwarded to an Office medical adviser for a determination of appellant's impairment based on the A.M.A., *Guides*.⁴

The Office medical adviser determined that appellant had a four percent impairment of the right upper extremity based on the A.M.A., *Guides*. The rating was based on loss of range of motion and pain. Dr. Sherman noted a one percent impairment for loss of shoulder flexion and a one percent impairment for loss of shoulder extension.⁵ This is consistent with Dr. Patti's finding that the right glenohumeral joint shows within 10 degrees of flexion compared to the other side. The Office medical adviser noted that appellant also had a one percent impairment for loss of shoulder abduction.⁶ This rating is consistent with Dr. Sherman's finding that appellant had abduction in the right shoulder of 150 degrees. The Office medical adviser determined that this resulted in a three percent impairment for loss of motion. With regard to impairment for pain, the Office medical adviser noted that appellant had Grade 4 pain of the axillary nerve deltoid muscle. He determined that under Table 16-10 appellant's pain was Grade 4 as it was "decreased sensation that is forgotten with activity." Grade 4 allows for a 25 percent sensory deficit. Under Table 16-15, he noted the maximum impairment allowed for sensory loss of the axillary nerve was five percent. The Office medical adviser multiplies the sensory deficit impairment by the grade deficit to find a one percent impairment of the right upper extremity.⁷ He utilized the Combined Values Chart to the three percent impairment for loss of motion and one percent impairment for pain, resulting in a four percent impairment of the right upper extremity. As the Office medical adviser is the only physician to properly apply the A.M.A., *Guides*, his opinion constitutes the weight of the evidence.⁸ There is no other medical evidence establishing that appellant sustained a greater impairment. Consequently, he has not established that he is entitled to a schedule award greater than that for which he has received.⁹

CONCLUSION

The Office properly found that appellant was entitled to a four percent impairment of his right upper extremity for which he received a schedule award.

⁴ *Id.*

⁵ A.M.A., *Guides* 476, Figure 16-40.

⁶ *Id.* at 477, Figure 16-43.

⁷ *Id.* at 482, Table 16-10; 492, Table 16-15.

⁸ *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁹ Dr. Sherman's report contains measurements for elevation, abduction, adduction and internal and external rotation. This contradicts appellant's assertion that Dr. Sherman took no measurements during his examination.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 29 and August 24, 2005 are affirmed.

Issued: September 14, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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