



## **FACTUAL HISTORY**

Appellant, a 67-year-old mail clerk, injured her right upper extremity in an employment-related fall on October 10, 2007. The Office accepted her claim for right shoulder contusion and right rotator cuff tear. On April 25, 2008 appellant underwent arthroscopic surgery to repair her right shoulder, which the Office authorized. Following surgery she returned to full-time, limited-duty work on May 27, 2008 and filed a claim for a schedule award.

In a report dated September 30, 2008, appellant's surgeon, Dr. Sanagaram S. Shantharam, a Board-certified orthopedic surgeon, advised that her right shoulder condition had stabilized and that she was permanent and stationary. He found 10 percent impairment to the right upper extremity for limited range of motion (ROM) in the shoulder. Dr. Shantharam indicated that 140 degrees of forward flexion represented three percent impairment. He also found three percent impairment for zero degrees extension.<sup>2</sup> Dr. Shantharam noted that 110 degrees of abduction represented three percent impairment and 70 degrees external rotation represented one percent impairment. He further noted that 70 degrees of internal rotation represented zero percent impairment. Adding the range of motion impairments totaled 10 percent right upper extremity impairment.

The Office referred the record to its district medical adviser, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon. In a report dated January 26, 2009, Dr. Harris diagnosed status post right shoulder arthroscopy with arthroscopic debridement, subacromial decompression and partial distal clavicle excision with open rotator cuff repair. Based on Dr. Shantharam's September 30, 2008 examination findings, Dr. Harris found seven percent impairment of the right upper extremity for loss of shoulder flexion (three percent), abduction (three percent) and internal rotation (one percent). However, with respect to the three percent impairment, Dr. Shantharam identified for loss of extension, Dr. Harris noted that the September 30, 2008 examination did not document any residual loss of shoulder extension. Consequently, he did not include this impairment found seven percent impairment of the right upper extremity and noted that the date of maximum medical improvement was September 30, 2008.

On February 10, 2009 the Office granted a schedule award for seven percent impairment of the right arm. The award covered a period of 21.84 weeks from October 1, 2008 through January 17, 2009.

Appellant requested a review of the written record. In a decision dated July 23, 2009, an Office hearing representative set aside the February 10, 2009 schedule award to obtain clarification from Dr. Shantharam regarding loss of shoulder extension.

The Office requested that Dr. Shantharam submit another impairment rating. It provided a copy of Dr. Harris' January 26, 2009 report and noted there was some confusion whether loss of right shoulder extension was found on September 30, 2008. The Office advised that the

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<sup>2</sup> While Dr. Shantharam found three percent impairment ostensibly due to limitations in shoulder extension, his September 30, 2008 physical examination findings did not include measurements for right shoulder extension.

impairment rating should be prepared in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

While the case was still pending before the Branch of Hearings and Review, the Office referred appellant to Dr. Alice M. Martinson, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated July 28, 2009, Dr. Martinson advised that the anterior portion of appellant's rotator cuff repair had clinically failed. She diagnosed probable failed rotator cuff repair, right shoulder. The Office did not ask Dr. Martinson to provide an impairment rating; however, her examination findings included range of motion measurements.

In an August 17, 2009 report, Dr. Shantharam advised that appellant did not have any loss of extension when he examined her on September 30, 2008. He noted that appellant's physical therapy records from July 7, 2008 revealed that she had 45 degrees of extension in both shoulders, which was a normal examination. Dr. Shantharam explained that because there was no loss of extension, it was not utilized for purposes of rating appellant's impairment. He reiterated his September 30, 2008 right shoulder range of motion measurements for forward flexion (140 degrees), abduction (110 degrees), internal rotation (70 degrees) and external rotation (70 degrees). Dr. Shantharam also noted that appellant had a marginal loss of muscular strength (4/5) in the right shoulder and subjective complaints of pain and discomfort. He did not apply the 6<sup>th</sup> edition of the A.M.A., *Guides* as the Office requested.

The Office referred the record to Dr. Harris. In an August 29, 2009 report, Dr. Harris determined that appellant had eight percent impairment of the right upper extremity. He applied the sixth edition of the A.M.A., *Guides* to Dr. Shantharam's September 30, 2008 right shoulder measurements and found three percent impairment for loss of flexion, three percent for loss of abduction and two percent for loss of internal rotation.<sup>3</sup>

In a decision dated September 9, 2009, the Office found that appellant had eight percent impairment of the right upper extremity. Because appellant was previously compensated for seven percent impairment, the Office granted a schedule award for one percent impairment, which represented an additional 3.12 weeks of compensation.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act 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>4</sup> The Act, 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.,

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<sup>3</sup> Dr. Harris did not reference Dr. Martinson's July 28, 2009 report, which the Office received on August 3, 2009.

<sup>4</sup> For a total loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2006).

*Guides* as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6<sup>th</sup> ed. 2008).<sup>6</sup>

Although the diagnosis-based approach is the preferred method of evaluating permanent impairment under the sixth edition of the A.M.A., *Guides*, the shoulder regional grid, Table 15-5, A.M.A., *Guides* 401-05, provides that, if loss of motion is present, the impairment may alternatively be assessed using section 15-7, range of motion impairment.<sup>7</sup> A range of motion impairment stands alone and is not combined with a diagnosis-based impairment.<sup>8</sup>

### ANALYSIS

The Office properly determined that appellant had eight percent impairment of the right arm due to loss of motion in the shoulder. In an August 17, 2009 report, Dr. Shantharam clarified that appellant had no loss of shoulder extension when he examined her on September 30, 2008. He reaffirmed his previous examination findings. While appellant's surgeon did not rate her impairment under the sixth edition of the A.M.A., *Guides*, Dr. Harris was able to apply Dr. Shantharam's September 30, 2008 examination findings to the sixth edition of the A.M.A., *Guides*.

According to Table 15-34, A.M.A., *Guides* 475, forward flexion of 140 degrees represents three percent impairment of the upper extremity. Abduction of 110 degrees also represents three percent upper extremity impairment under Table 15-34. Seventy degrees of internal rotation represents two percent upper extremity impairment. Seventy degrees of external rotation represents zero percent impairment under Table 15-34. Adding the right shoulder measurements totals eight percent impairment of the right upper extremity as correctly found by Dr. Harris. The Board notes that the right shoulder measurements reported by Dr. Martinson do not result in a greater impairment under the A.M.A., *Guides* (6<sup>th</sup> ed. 2008).<sup>9</sup> Accordingly, the medical evidence of record does not establish more than eight percent right arm impairment.

### CONCLUSION

The Board finds that appellant has eight percent impairment of the right upper extremity.

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<sup>5</sup> 20 C.F.R. § 10.404 (2009).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

<sup>7</sup> See A.M.A., *Guides* 459, 461, section 15-7.

<sup>8</sup> *Id.* at 461.

<sup>9</sup> The July 28, 2009 examination revealed the following bilateral (R/L) shoulder ROM measurements (and their corresponding right upper extremity impairment under Table 15-34): Flexion 170 degrees/170 (three percent); abduction 170 degrees/160 (zero percent); internal rotation 70 degrees/70 (two percent); external rotation 90 degrees/90 (zero percent); and extension 40 degrees/40 (one percent). Under Table 15-34 these measurements result in an overall right upper extremity impairment of six percent.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 21, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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