

distal clavicle resections.¹ He underwent additional surgery to the right shoulder to repair a torn rotator cuff on May 18, 2007. Appellant received wage-loss compensation benefits.

On July 16, 2008 appellant requested an additional schedule award. By letter dated August 6, 2008, the Office requested that he obtain an assessment of permanent impairment from his physician based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fifth edition 2001) (A.M.A., *Guides*).

In a report dated August 27, 2008, Dr. Noah Weiss, a Board-certified orthopedic surgeon and treating physician, provided range of motion (ROM) measurements for the shoulders which included flexion of 150 degrees on the right and 155 degrees on the left, extension of 50 degrees on the right and left, abduction of 160 degrees on the right and 165 degrees on the left, internal rotation of 70 degrees on the right and 90 degrees on the left and external rotation of 80 degrees on the right and left. He advised that appellant was permanent and stationary for both shoulders.

In a September 22, 2008 report, Dr. Weiss reviewed appellant's history of injury and treatment and utilized the A.M.A., *Guides*. For shoulder ROM, he referred to Figures 16-38 and 16-46 and determined that appellant had a four percent impairment of the right upper extremity and a one percent impairment of the left upper extremity.² Dr. Weiss referred to Table 16-27 and advised that the shoulder arthroplasty would warrant 10 percent impairment for each upper extremity.³ He determined that this would result in an 11 percent impairment of the left upper extremity and a 14 percent impairment of the right upper extremity.⁴

In a report dated January 10, 2009, an Office medical adviser reviewed the medical evidence under the A.M.A., *Guides*.⁵ For ROM, she referenced figures in the A.M.A., *Guides* and determined for the right shoulder that appellant had two percent impairment for loss of flexion, no impairment for loss of extension, one percent for loss of abduction and no impairment for loss of adduction⁶ The Office medical adviser further found that he had one percent impairment for loss of internal rotation and no impairment for loss of external rotation.⁷ For the left shoulder, she determined that appellant had one percent impairment for loss of flexion but no impairment for loss of extension, loss of abduction, loss of adduction, loss of internal rotation and loss of external rotation. The Office medical adviser referred to Table 16-

¹ The record also reflects that appellant received a schedule award for 22 percent impairment of the left arm, due to a hand or wrist injury, under File No. xxxxxx369, for total impairment of the left arm of 45 percent. File No. xxxxxx369 is not before the Board on the present appeal.

² A.M.A., *Guides* 450-54, 474-79.

³ *Id.* at 505-06.

⁴ Dr. Weiss also noted findings for whole person impairment.

⁵ The Office medical adviser noted that appellant was previously found to have 23 percent impairment of the right arm and 45 percent impairment of the left arm with 23 percent based on the shoulder injury and the remainder due to a wrist/hand injury under a separate claim.

⁶ A.M.A., *Guides* 476, 477, Figure 16-40, Figure 16-43.

⁷ *Id.* at 479, Figure 16-46.

27 and determined that appellant had impairment of 10 percent of each arm due to his bilateral distal clavicle resection.⁸ She concurred that he had total impairment for the right upper extremity of 14 percent and 11 percent to the left upper extremity as this did not represent additional impairment since the previous determination, she recommended there was no basis for a schedule award. The Office medical adviser determined that appellant reached maximum medical improvement on August 27, 2008.

In a February 10, 2009 decision, an Office denied appellant's claim for an additional schedule award. It found that the medical evidence did not support an increase in work-related impairment.

On March 9, 2009 appellant requested a review of the written record. In a letter dated March 19, 2009, he contended that his employment history was incorrect and provided additional details of his work duties. Appellant contended that the rating from Dr. Weiss supported an increase in permanent impairment.

By decision dated July 22, 2009, an Office hearing representative affirmed the Office's February 10, 2009 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁹ 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.¹⁰ 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.¹¹ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹²

ANALYSIS

Appellant's claim was accepted bilateral rotator cuff tear. He underwent a left shoulder arthroscopy on September 15, 2000 and a right shoulder arthroscopy on January 30, 2001 and May 18, 2007. Based on reports from his treating physician and the Office medical adviser, appellant was found to have 14 percent impairment of the right upper extremity and 11 percent of the left upper extremity.

⁸ *Id.* at 506.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *Id.* at. § 8107.

¹¹ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹² A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

The Board finds that the Office properly determined the impairment to appellant's right and left shoulders. Applying Figures 16-40, 16-43 and 16-46 of the fifth edition of the A.M.A., *Guides*¹³ to the findings of Dr. Weiss, an Office medical adviser properly assigned two percent impairment for 150 degrees of flexion, zero percent for 50 degrees of extension, one percent for 160 degrees of abduction, zero percent for 40 degrees adduction, zero percent for 80 degrees of external rotation and one percent for 70 degrees of internal rotation, for a total of four percent impairment for loss of right shoulder motion. For the left shoulder, the Office medical adviser assigned one percent impairment for 155 degrees of flexion, zero percent for 50 degrees of extension, zero percent for 165 degrees of abduction, zero percent for 40 degrees adduction, zero percent for 80 degrees of external rotation and zero percent for 90 degrees of internal rotation for a total impairment of one percent for loss of motion in the left arm. Dr. Weiss made the same impairment findings for loss of ROM.

Under Table 16-27, page 506 of the A.M.A., *Guides*, Dr. Weiss and the Office medical adviser determined that appellant had 10 percent upper extremity impairment for the distal clavicle resections to each shoulder. The Board finds that this was proper under the A.M.A., *Guides*.

Using the Combined Values Chart of the A.M.A., *Guides*, the right arm rating combined the 4 percent loss of motion with the 10 percent right distal clavicle resection arthroplasty to total 14 percent impairment of the right upper extremity.¹⁴ The 10 percent distal clavicle resection combined with the 1 percent loss of motion for the left shoulder totaled 11 percent impairment of the left upper extremity.¹⁵

As appellant previously received a schedule award for 23 percent impairment of each arm, the medical evidence of record does not establish that appellant sustained greater impairment than that for which he previously received a schedule award.

On appeal, appellant asserts that the schedule award was based on his attending physician's report, which included whole person impairment. As noted, Dr. Weiss provided an impairment rating for each arm and for the whole person and the Office medical adviser based her calculation on impairment of each arm and not the whole person. While he converted the individual arm ratings to a whole person rating, the Office does not base schedule award determinations on whole person impairment. A schedule award is not payable for impairment of the whole person.¹⁶

CONCLUSION

The Board finds that appellant has no more than 23 percent permanent impairment of his right and left upper extremities based on his accepted shoulder conditions.

¹³ *Id.* at 476, 477, 479.

¹⁴ *Id.* at 604.

¹⁵ *Id.*

¹⁶ *See D.K.*, 61 ECAB ____ (Docket No. 10-174, issued July 2, 2010).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 22, 2009 is affirmed.

Issued: February 7, 2011
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