

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**TEREAI A. LEWIS, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS BENEFITS ADMINISTRATION,  
Chicago, IL, Employer**

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**Docket No. 05-1467  
Issued: September 30, 2005**

*Appearances:*  
*Tereai Lewis, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 5, 2005 appellant filed a timely appeal from the May 11, 2005 merit decision of the Office of Workers' Compensation Programs, which awarded her 9.36 weeks of compensation for a three percent permanent impairment of her left arm. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the May 11, 2005 schedule award.

**ISSUE**

The issue is whether appellant has more than a three percent permanent impairment of her left upper extremity, entitling her to an increased schedule award.

**FACTUAL HISTORY**

On September 11, 2000 appellant, then a 36-year-old claims examiner, filed a claim alleging that her chronic left shoulder, elbow, wrist and hand pain was a result of her federal employment. The Office accepted her claim for left ulnar strain, left shoulder strain and left

forearm strain. The Office later expanded its acceptance to include left ulnar compression, left flexor tendinitis and left shoulder bursitis.

On February 25, 2003 appellant filed a claim for a schedule award. The Office asked appellant's attending orthopedist, Dr. Mark Cavales, to determine the extent of permanent impairment due to the accepted employment injury. On May 15, 2003 Dr. Cavales related the findings obtained from appellant's most recent examination on April 11, 2003. He stated that she had reached maximum medical improvement, but offered no opinion on permanent impairment.

The Office referred appellant to Dr. Benjamin A. Goldberg, a Board-certified orthopedic surgeon, for an evaluation. He examined appellant on November 3 and 10, 2003. On November 12, 2003 Dr. Goldberg reported appellant's history and complaints and his findings on examination. He diagnosed mild posterior capsular tightness (stiffness) of the left shoulder, mild tendinitis of the flexor carpi radialis, intermittent cervical strain and mild hand stiffness.<sup>1</sup> Dr. Goldberg reported 0 to 85 degrees interphalangeal motion and 0 to 90 degrees metacarpophalangeal motion of the thumb along the metacarpal axis, which corresponded to 40 degrees of extension and 50 degrees of flexion. He also reported 0 to 95 degrees proximal interphalangeal motion for each finger. Finally, he reported 70 degrees internal rotation of the shoulder. All other findings showed no impairment. Dr. Goldberg stated that appellant had a one percent upper extremity impairment from shoulder stiffness and a three percent upper extremity impairment hand stiffness. He added that she had reached maximum medical improvement.

An Office medical adviser reviewed appellant's chart and determined that she had a three percent permanent impairment of the left upper extremity: one percent for lack of internal rotation of the shoulder and two percent for a Grade 3 pain in the distribution of the suprascapular nerve to her right [sic] shoulder. He noted that there was no relationship between the deficits in thumb range of motion and the currently accepted conditions in her left upper extremity.

On May 11, 2005 the Office issued a schedule award for a three percent permanent impairment of the left upper extremity, which amounted to 9.36 weeks of compensation.

On appeal, appellant requested an increase in the amount of her schedule award: "I am entitled to a higher schedule award payment and I disagree with the two-month period, my disability began January 1, 1999 and continues to this day."

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act authorizes the payment of a schedule award for the loss or loss of use of specified members, organs or functions of the body.<sup>2</sup>

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<sup>1</sup> On July 22, 2004 Dr. Goldberg clarified that these diagnoses were work related.

<sup>2</sup> 5 U.S.C. § 8107.

Congress has determined that the most an employee may receive for the total loss of an arm is 312 weeks of compensation.<sup>3</sup> Compensation for a permanent partial loss is proportionate.<sup>4</sup>

Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>5</sup>

### ANALYSIS

Table 16-46, page 479, of the A.M.A., *Guides* provides that 70 degrees of internal rotation of the shoulder represents a 1 percent impairment of the upper extremity, as the Office medical adviser reported. The Office medical adviser also reported that appellant had a two percent impairment for a Grade 3 pain in the distribution of the suprascapular nerve to her right [sic] shoulder. But Table 16-10, page 482, “Determining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting from Peripheral Nerve Disorders,” is to be used only for pain due to a nerve injury or disease that has been documented with objective physical findings or electrodiagnostics.<sup>6</sup> The Office medical adviser mentioned no such documentation, and he provided no rationale for identifying the nerve structure or grading the severity of the pain at 30 percent. As the evaluating physician identified no peripheral nerve injury and offered no rating for such, the Board finds that the medical adviser’s two percent rating for pain is not supported by the medical evidence.

Moreover, it is well established that in determining the degree of impairment for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body member are to be included in the evaluation of the permanent impairment.<sup>7</sup> So impairments of the thumb and fingers should be included in calculating appellant’s schedule award even if there is no relationship, as the Office medical adviser noted, between those impairments and the conditions the Office accepted.

Figure 16-12, page 456, provides that zero degrees’ extension of the interphalangeal joint represents a one percent impairment of the thumb. Figure 16-15, page 457, provides that 50 degrees’ flexion of the metacarpophalangeal joint also represents a 1 percent impairment of the thumb. Finally, Figure 16-23, page 463, provides that 95 degrees’ flexion of the proximal interphalangeal joint represents a 3 percent impairment of the finger. Dr. Goldberg properly converted appellant’s two percent thumb impairment and three percent impairment of each of the fingers into a three percent impairment of the left hand using Table 16-1, page 438. Using Table

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<sup>3</sup> *Id.* at § 8107(c)(1).

<sup>4</sup> *Id.* at § 8107(c)(19).

<sup>5</sup> 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

<sup>6</sup> A.M.A., *Guides* at 482 (5<sup>th</sup> ed. 2001).

<sup>7</sup> *Mike E. Reid*, 51 ECAB 543 (2000) and authorities cited therein.

16-2, page 439, he properly converted appellant's three percent hand impairment into a three percent impairment of the upper extremity.

Dr. Goldberg correctly reported that multiple regional impairments, such as those of the hands and shoulder, are first expressed individually as upper extremity impairments and then combined using the Combined Values Chart, page 604, to determine the total upper extremity impairment.<sup>8</sup> Appellant's three percent upper extremity impairment due to loss of thumb and finger motion combines with her one percent upper extremity impairment due to loss of shoulder motion for a total impairment of the upper extremity of four percent. The Board therefore finds that she has greater impairment than that awarded.

Appellant's primary contention on appeal is that she injured herself in 1999 and she still hurts, and therefore she should have more than a mere two months' worth of compensation. Under section 8107, Congress has determined that the most any employee may receive for the total loss of use of an arm is 312 weeks of compensation. That means if an employee's arm is totally impaired as a result of her federal employment. The maximum she can receive is 312 weeks of compensation. The amount payable pursuant to a schedule award does not take into account the effect the impairment may have on employment opportunities, sports, hobbies or other lifestyle activities.<sup>9</sup> Compensation for a permanent partial loss is proportionate. So a 4 percent permanent impairment of the left upper extremity is awarded compensation of 4 percent of 312 weeks, or 12.48 weeks of compensation. This is 3.12 weeks more compensation than she previously received.<sup>10</sup>

### CONCLUSION

The Board finds that appellant has a four percent permanent impairment of her left upper extremity. The Board will affirm the Office's May 11, 2005 decision as modified and remand the case for payment of the additional compensation.

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<sup>8</sup> A.M.A., *Guides* at 438.

<sup>9</sup> See *Harry D. Butler*, 43 ECAB 859 (1992); *Robert E. Kuehl*, 13 ECAB 77 (1961).

<sup>10</sup> Appellant may nonetheless be entitled to further compensation for wage loss or medical expenses, which is distinct from compensation for permanent physical impairment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11, 2005 decision of the Office of Workers' Compensation Programs is modified to reflect a four percent permanent impairment of the left upper extremity and is affirmed as modified.

Issued: September 30, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

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