

This is the second appeal before the Board. In a March 12, 2008 decision, the Board set aside Office decisions dated November 2, 2006 and April 25, 2007 which granted 5 percent impairment for the left upper extremity and affirmed the decisions with regard to a 21 percent impairment of the right upper extremity. The claim was remanded for further medical development. The Board found a conflict of medical opinion between appellant's treating

physician, Dr. James B. Kullbom, a Board-certified orthopedic surgeon, who opined that appellant had nine percent left arm impairment, and an Office referral physician and Office medical adviser who opined that appellant had five percent left arm impairment. The facts and the circumstances of the case are set forth in the Board's prior decision and incorporated herein by reference.<sup>1</sup>

On May 12, 2008 the Office referred appellant to a referee physician, Dr. Jeffrey A. Wunder, a Board-certified orthopedic surgeon.

In a June 11, 2008 report, Dr. Wunder reviewed the record and appellant's history. On examination, he noted tenderness of the left upper trapezius, local tenderness at the acromioclavicular joint and bicipital groove as well as the short head of the biceps tendon at the coracoid process. Dr. Wunder determined that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>2</sup> (A.M.A., *Guides*) appellant sustained seven percent impairment of the left arm. Range of motion testing of the left shoulder revealed flexion of 150 degrees for two percent impairment,<sup>3</sup> extension measured 40 degrees for one percent impairment,<sup>4</sup> abduction measured 140 degrees for two percent impairment,<sup>5</sup> adduction measured 30 degrees for one percent impairment,<sup>6</sup> external rotation measured 85 degrees for zero percent impairment<sup>7</sup> and internal rotation measured 70 degrees on the right for one percent impairment.<sup>8</sup> Dr. Wunder noted no muscle atrophy, the neurological examination revealed intact sensation and manual muscle testing was normal. He diagnosed chronic left shoulder pain, left shoulder acromioclavicular arthralgia, probably related to underlying osteoarthritis and probable short and long head biceps tendinitis. Dr. Wunder opined that appellant had underlying osteoarthritis of the left shoulder which was aggravated by his work-related activity requiring repetitive overhead activities. He noted, based on a review of medical records, appellant reached maximum medical improvement on July 21, 2000. Dr. Wunder opined that appellant had seven percent impairment of the left arm based on loss of range of motion due to the accepted work-related injury.

In a July 8, 2008 decision, the Office granted appellant a schedule award for seven percent permanent impairment of the left upper extremity. The period of the award was from September 9 to October 22, 2005. The Office noted that appellant was previously granted a

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<sup>1</sup> Docket No. 07-1896 (issued March 12, 2008).

<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>3</sup> *Id.* at 476, Figure 16-40.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 477, Figure 16-43.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 479, Figure 16-46.

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

schedule award for five percent impairment of the left upper extremity and was entitled to an additional two percent impairment.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>9</sup> and its implementing regulations<sup>10</sup> set 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

### **ANALYSIS -- ISSUE 1**

On appeal, appellant contends that he has more than seven percent permanent impairment of the left upper extremity. The Office accepted appellant's claim for temporary aggravation of bilateral shoulder osteoarthritis. The Board found that a conflict in the medical evidence arose between Dr. Kullbom, an attending physician, who disagreed with the Office medical adviser and an Office referral physician as to the extent of impairment to his left upper extremity. Consequently, the Office referred appellant to Dr. Wunder to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>11</sup>

The Board finds that the opinion of Dr. Wunder is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. Dr. Wunder advised that appellant sustained a seven percent impairment of the left upper extremity.

Dr. Wunder reviewed appellant's history and reported findings which establish seven percent impairment of the left arm. He noted range of motion of the left shoulder revealed flexion of 150 degrees on the right for two percent impairment,<sup>12</sup> extension measured 40 degrees on the for one percent impairment,<sup>13</sup> abduction measured 140 degrees for two percent impairment,<sup>14</sup> adduction measured 30 degrees for one percent impairment,<sup>15</sup> external rotation

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<sup>9</sup> 5 U.S.C. § 8107.

<sup>10</sup> 20 C.F.R. § 10.404.

<sup>11</sup> *Aubrey Belnavis*, 37 ECAB 206 (1985). See 5 U.S.C. § 8123(a).

<sup>12</sup> A.M.A., *Guides* 476, Figure 16-40.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 477, Figure 16-43.

<sup>15</sup> *Id.*

measured 85 degrees for zero percent impairment<sup>16</sup> and internal rotation measured 70 degrees on the right for one percent impairment.<sup>17</sup> These impairment values total seven percent. Dr. Wunder noted that he found no muscle atrophy, intact sensation on the neurological examination and normal manual muscle testing. He diagnosed chronic left shoulder pain, left shoulder acromioclavicular arthralgia, probably related to underlying osteoarthritis and probable short and long head biceps tendinitis. Dr. Wunder noted that appellant reached maximum medical improvement on July 21, 2000. He opined that in accordance with the A.M.A., *Guides* appellant sustained a seven percent impairment of the left shoulder based on loss of range of motion due to the accepted work-related injury. The Board finds that the report of Dr. Wunder constitutes the weight of the medical opinion.

### **CONCLUSION**

The Board finds that appellant has no more than seven percent permanent impairment of the left upper extremity.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2009  
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

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<sup>16</sup> *Id.* at 479, Figure 16-46.

<sup>17</sup> *Id.*