

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

FLORA J. MARTIN, Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
SUPPLY CENTER, Columbus, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 06-508
Issued: July 11, 2006**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 28, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated December 1, 2005 which denied her claim for an increased schedule award for the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination in this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she has greater than an 11 percent permanent impairment of the right upper extremity for which she received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board. In an August 3, 2004 decision, the Board found the case not in posture for decision and remanded the case to the Office to obtain range of motion measurements for extension and adduction of appellant's right shoulder and to

determine whether appellant's pain was adequately rated.¹ The facts and the law of the previous Board decision are incorporated herein by reference.

On September 10, 2004, the Office referred appellant, together with a statement of accepted facts and a set of questions, to Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, for an impairment rating in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).² In an October 5, 2004 report, Dr. Ghanma provided range of motion findings for appellant's right shoulder, elbow and wrist. Right shoulder flexion was 102 degrees and extension 30 degrees which, he advised, demonstrated 5 and 1 percent upper extremity impairments respectively, under Figure 16-40 of the A.M.A., *Guides*. Right shoulder abduction was 95 degrees and adduction was 30 degrees which, under Figure 16-43, demonstrated impairments of 4 and 1 percent respectively. Right shoulder internal and external rotation were 90 degrees each which, under Figure 16-46, demonstrated no impairment. Dr. Ghanma totaled appellant's shoulder impairments, finding a 11 percent right upper extremity impairment. He then noted elbow flexion of 150 degrees, extension of 0 degrees, supination of 80 degrees and pronation of 90 degrees which, he advised, demonstrated no impairment under Figures 16-34 and 16-37 of the A.M.A., *Guides*. Right wrist extension measures 70 and 65 degrees, radial deviation 20 degrees and ulnar deviation 50 degrees which, under Figures 16-28 and 16-31, also demonstrated no impairment. He advised that, based on range-of-motion measurements, appellant had an 11 percent right upper extremity impairment. In response to specific Office questions, Dr. Ghanma advised that maximum medical improvement had been reached on May 13, 1998, that appellant had no definite decrease in strength, no atrophy or ankylosis, and no sensory changes present, and that he was of the opinion that her right shoulder extension and abduction motions did not demonstrate maximal effort. Regarding her subjective complaints of pain and discomfort, Dr. Ghanma advised that these could not be explained on the basis of the 1996 employment injury and no impairment related to her subjective complaints was appropriate, noting that acute pain from such injuries lasted only several weeks. He concluded that, under the fifth edition of the A.M.A., *Guides*, appellant was entitled to an 11 percent right upper extremity impairment.

In a December 20, 2004 report, an Office medical adviser noted her review of the medical record including Dr. Ghanma's evaluation. She agreed with his finding regarding maximum medical improvement and his conclusion that, based on appellant's range-of-motion measurements of her right shoulder, elbow and wrist, she had an 11 percent right upper extremity impairment and no other ratable right upper extremity impairments. By decision dated December 22, 2004, the Office found that the medical evidence did not support that appellant was entitled to an increased schedule award.

On January 3, 2005 appellant, through counsel, requested a hearing that was held on August 8, 2005. At the hearing appellant's attorney argued that the Office had not followed the Board's remand instructions because neither Dr. Ghanma nor the Office medical adviser had

¹ Docket No. 04-1084 (issued August 3, 2004).

² A.M.A., *Guides*; *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

evaluated appellant's pain. In a December 1, 2005 decision, an Office hearing representative affirmed the December 22, 2004 Office decision.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.404 of the implementing federal regulation,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁵ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the figures and tables found in the A.M.A., *Guides*. However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.⁷

Chapter 16 of the fifth edition of the A.M.A., *Guides* provides the framework for assessing upper extremity impairments.⁸ Section 16.4 provides that in evaluating abnormal motion both active and passive motion measurements are necessary to evaluate the joint motion under the appropriate charts, and these should be added to obtain the total motion impairment.⁹ Section 18.3b provides that pain-related impairment should not be used if the condition can be adequately rated under another section of the A.M.A., *Guides*. Office procedures provide that, if the conventional impairment adequately encompasses the burden produced by pain, the formal impairment rating is determined by the appropriate section of the A.M.A., *Guides*. In some situations, however, an impairment rating can be increased by up to three percent if pain increases the burden of the employee's condition.¹⁰

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides*, *supra* note 2.

⁶ See *Joseph Lawrence, Jr.*, *supra* note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁷ *Robert V. Disalvatore*, 54 ECAB 351 (2003).

⁸ A.M.A., *Guides*, *supra* note 2 at 433-521.

⁹ *Id.* at 451-52.

¹⁰ *Richard B. Myles*, 54 ECAB 379 (2003).

ANALYSIS

The Board finds that appellant does not have more than an 11 percent impairment of her right upper extremity. In an October 5, 2004 report, Dr. Ghanma advised that she reached maximum medical improvement on May 13, 1998. He provided range-of-motion measurements for her right shoulder, elbow and wrist and then properly determined her impairment rating in accordance with the fifth edition of the A.M.A., *Guides*. He found that right shoulder flexion of 102 degrees and extension of 30 degrees demonstrated 5 and 1 percent upper extremity impairments respectively under Figure 16-40 of the A.M.A., *Guides*;¹¹ right shoulder abduction of 95 degrees and adduction of 30 degrees demonstrated impairments of 4 and 1 percent respectively under Figure 16-43;¹² right shoulder internal and external rotation of 90 degrees each demonstrated no impairment under Figure 16-46.¹³ Dr. Ghanma properly totaled appellant's shoulder impairments to equal an 11 percent right upper extremity impairment. He properly noted that her elbow range of motion measurements of 150 degrees of flexion, 0 degrees of extension, 80 degrees of supination and 90 degrees of pronation demonstrated no impairment under Figures 16-34 and 16-37.¹⁴ Similarly, right wrist extension of 70 and 65 degrees, radial deviation of 20 degrees and ulnar deviation of 50 degrees demonstrated no impairment under Figures 16-28 and 16-31.¹⁵ Based on appellant's right upper extremity range-of-motion measurements, she had an 11 percent impairment. Dr. Ghanma also answered specific Office questions and advised that appellant was not entitled to an additional right upper extremity impairment rating.

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.¹⁶ The Office referred Dr. Ghanma's October 5, 2004 report to an Office medical adviser. Based on Dr. Ghanma's physical findings, the Office medical adviser assessed appellant's upper extremity impairments in accordance with the A.M.A., *Guides* and with Dr. Ghanma's impairment rating. The medical evidence of record establishes that appellant has an 11 percent right upper extremity impairment, based on her range-of-motion measurements.

The Board also finds that appellant was adequately evaluated for pain. Dr. Ghanma advised that appellant had no definite decrease in strength, no atrophy or ankylosis, and no sensory changes. He opined that her subjective complaints of pain and discomfort could not be explained on the basis of the 1996 employment injury and no impairment related to her

¹¹ A.M.A., *Guides*, *supra* note 2 at 476.

¹² *Id.* at 477.

¹³ *Id.* at 479.

¹⁴ *Id.* at 472, 474.

¹⁵ *Id.* at 467, 469. It is unclear whether one of the wrist measurements of 70 and 65 degrees, both of which were identified as extension measures was actually a flexion measurement. Both measurements provide zero impairment for both flexion and extension. A.M.A., *Guides*, *id.*, Figure 16-28 at 467.

¹⁶ See *Thomas J. Fragale*, 55 ECAB ____ (Docket No. 04-835, issued July 8, 2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, *id.*

subjective complaints was appropriate. The Office medical adviser agreed with his conclusion. Neither Dr. Ghanma nor the Office medical adviser allowed any additional percentages for pain. The Board notes, however, that this is consistent with the A.M.A., *Guides*, which provides that “the impairment ratings in the body system organ chapters make allowance for any accompanying pain.”¹⁷ While additional impairments may be granted for chronic pain,¹⁸ the reports of Dr. Ghanma and the Office medical adviser provide the only evaluations that conform with the A.M.A., *Guides* and therefore constitute the weight of the medical evidence. Appellant has therefore not established that she is entitled to an additional impairment rating for pain.

Both Dr. Ghanma and the Office medical adviser provided a basis for their impairment ratings and referenced the specific figures in the A.M.A., *Guides* on which they relied. Their analysis for range-of-motion deficits of the wrist, elbow and shoulder under the appropriate figures of Chapter 16 of the A.M.A., *Guides* demonstrates that appellant has an 11 percent right upper extremity impairment, for which she previously received schedule awards in January and November 1999. Appellant is therefore not entitled to an additional schedule award.

CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to a right upper extremity impairment rating greater than the 11 percent previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated December 1, 2005 be affirmed.

Issued: July 11, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

David S. Gerson, Judge
Employees’ Compensation Appeals Board

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

¹⁷ A.M.A., *Guides*, *supra* note 2, Chapter 2.5e at 20.

¹⁸ *Richard B. Myles*, *supra* note 10.