

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

S.C., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Wilmington, DE, Employer**)

**Docket No. 06-2116
Issued: February 9, 2007**

Appearances:
Jeffrey Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2006 appellant timely appealed the Office of Workers' Compensation Programs' September 12, 2006 merit decision regarding her entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she has more than a five percent left upper extremity impairment, for which she received a schedule award.

FACTUAL HISTORY

On March 2, 2005 appellant, then a 56-year-old information receptionist, filed a claim for an occupational injury to her left shoulder. She first noticed her shoulder condition and its

relation to her employment on January 31, 2005. The Office accepted her claim for a left shoulder strain.¹ There is no indication that appellant stopped work due to this injury.²

On August 2, 2006 appellant filed a claim for a schedule award. In a report dated July 6, 2006, Dr. Richard I. Zamarin, a Board-certified orthopedic surgeon, reviewed appellant's medical records and discussed her complaints and examination findings concerning her left shoulder and right knee conditions. Examination of the left shoulder revealed tenderness over the left AC joint and lateral subacromial space. Range of motion findings were noted as abduction 140 degrees, adduction 50 degrees, flexion 180 degrees, extension 60 degrees, external rotation 90 degrees and internal rotation 90 degrees. The strength of the left supraspinatus and external rotator were noted as 5/5. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*), Dr. Zamarin stated that there was no impairment of the upper extremity with regard to flexion, extension, external rotation, internal rotation and adduction. Under Figure 16-43, page 477 of the A.M.A., *Guides*, he noted that 140 degree abduction equated to a two percent upper extremity impairment, which under Table 16-3, page 439 of the A.M.A., *Guides* corresponded to one percent whole person impairment. He also reported findings for lower extremity impairment.

On August 9, 2006 an Office medical adviser reviewed Dr. Zamarin's July 6, 2006 report. He concurred that appellant had a two percent impairment due to lack of abduction. The Office medical adviser further found that appellant had an additional three percent impairment for pain according to Table 18-1 on page 574 of the A.M.A., *Guides*. Thus, he concluded that appellant had a five percent left upper extremity impairment. The Office medical adviser also concluded that appellant had a two percent left lower extremity impairment due to her work-related left knee condition. He further stated that the date of maximum medical improvement was July 8, 2006.

By decision dated September 12, 2006, the Office granted appellant a five percent left upper extremity impairment. The period of the award ran for 15.6 weeks from July 8 to October 25, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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

¹ In 2002 appellant underwent a left shoulder surgery to repair a nonwork-related rotator cuff condition.

² The record reflects that, under a separate claim, File No. 032041798, appellant has an accepted right medial meniscus tear for which she underwent surgery on January 13, 2006. The claim involving the accepted meniscal tear is not before the Board on the present appeal.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

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 regulation as the appropriate standard for evaluating schedule losses.⁵

ANALYSIS

In the current claim, the Office accepted that appellant sustained a left shoulder strain. Appellant filed a claim for a schedule award on August 2, 2006. In support of her claim, she submitted a July 6, 2006 report from Dr. Zamarin, who provided impairment ratings for appellant's left shoulder and left knee work-related conditions.⁶ For the left shoulder, Dr. Zamarin measured abduction 140 degrees, adduction 50 degrees, flexion 180 degrees, extension 60 degrees, external rotation 90 degrees and internal rotation 90 degrees. He determined that 140 degrees abduction constituted two percent upper extremity impairment under Figure 16-43 on page 477 of the A.M.A., *Guides*. Dr. Zamarin did not support that appellant had any greater impairment attributable to her left arm.

An Office medical adviser reviewed Dr. Zamarin's findings and concurred with his determination that appellant had two percent arm impairment due to loss of abduction.⁷ He additionally recommended that an additional three percent impairment for pain under Table 18-1 on page 574 of the A.M.A., *Guides* be added to the calculated two percent range of motion left shoulder impairment to arrive at a total impairment of five percent for the left shoulder. Chapter 18, however, should not be used to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.⁸ Dr. Zamarin did not provide a pain-related impairment and the Office medical adviser failed to explain why appellant's condition could not be adequately rated under other chapters. The Board, thus, finds that the evidence supports that appellant only has a two percent impairment of the left arm. Consequently, appellant has not established entitlement to a schedule award greater than the five percent awarded by the Office.

CONCLUSION

The Board finds that appellant has no more than a five percent impairment of her left upper extremity for which she received a schedule award.

⁵ *Id.*

⁶ Dr. Zamarin made impairment findings regarding appellant's left knee work-related condition; however, these findings will not be addressed on appeal as the current claim pertains only to appellant's left shoulder strain. *See* 20 C.F.R. § 501.2(c).

⁷ A.M.A., *Guides* 477, Figure 16-43.

⁸ *Id.* at 18.3(b); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (June 2003); *see also Philip A. Norulak*, 55 ECAB 690 (2004).

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2006 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: February 9, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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