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

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| **V.H., Appellant** | ) | |
| | ) | **Docket No. 07-1813** |
| **and** | ) | **Issued: January 23, 2008** |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Temple, TX, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*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 July 28, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 18, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

### ***ISSUE***

The issue is whether appellant has more than a 13 percent permanent impairment of the left arm for which she received a schedule award.

### ***FACTUAL HISTORY***

On March 22, 2001 appellant, then a 48-year-old vocational nurse filed a traumatic injury claim alleging that on November 9, 2000 she was repositioning a patient who pulled on her left

arm causing a shoulder injury.[1] The Office accepted her claim for left shoulder strain/sprain. Appellant did not stop work.

Appellant came under the treatment of Dr. John W. Ditzler, Jr., a Board-certified orthopedic surgeon, who treated appellant from March 7 to December 21, 2001, for a left shoulder injury which occurred at work. Dr. Ditzler diagnosed sprain of the left strap muscles of the shoulder and advised that appellant could return to work subject to a lifting restriction of 50 pounds. On March 19, 2002 he noted that appellant reported reinjuring her left arm at work when a patient grabbed her left arm when she was attempting to give him medication. Appellant experienced left shoulder pain and a burning sensation down her arm. Dr. Ditzler diagnosed exacerbation of old left shoulder strain with nerve impingement.

On March 20, 2002 appellant filed a CA-1, notice of traumatic injury, and alleged a left shoulder injury on March 19, 2002. While administering medication, a patient, pulled her left arm. The Office accepted appellant's claim for left shoulder strain and impingement syndrome.[2]

In an August 12, 2002 report, Dr. Ditzler noted that appellant's condition remained stable. He diagnosed impingement syndrome, left shoulder, with recurring discomfort. In a report dated September 18, 2003, Dr. Ditzler noted flexion of 150 degrees, extension of 50 degrees, abduction of 110 degrees, adduction of 50 degrees, internal rotation of 90 degrees and external rotation of 90 degrees. He opined that, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] (A.M.A., *Guides*), appellant sustained a five percent permanent impairment of the left upper extremity. Dr. Ditzler advised that she reached maximum medical improvement on September 18, 2003.

On July 28, 2003 appellant filed a claim for a schedule award.

In an October 27, 2003 report, an Office medical adviser agreed that appellant sustained a five percent permanent impairment of the left upper extremity. He noted that flexion of 150 degrees was a two percent impairment;[4] extension of 50 degrees was a zero percent impairment;[5] abduction of 110 degrees was a three percent impairment;[6] adduction of 50 degrees was a zero

[1] Appellant filed a separate claim for compensation on August 25, 2003 for a foot injury occurring while at work, File No. A2062730. The Office accepted appellant's claim for bilateral contusion of the knee, bilateral contusion of the hands and sprain and strain of the neck. On June 21, 2005 appellant was granted a schedule award for 10 percent permanent loss for each the left and right lower extremity. This claim was consolidated with the current claim before the Board.

[2] On August 1, 2003 the Office combined this claim with the current claim before the Board.

[3] A.M.A., *Guides* (5th ed. 2001).

[4] *Id*. at 476, Figure 16-40.

[5] *Id.*

[6] *Id*. at 477, Figure 16-43.

percent impairment;[7] internal rotation of 90 degrees was a zero percent impairment;[8] and external rotation of 90 degrees was a zero percent impairment.[9] The medical adviser added the loss of range of motion values to find five percent impairment to the left shoulder.

In a decision dated November 6, 2003, the Office granted appellant a schedule award for five percent permanent impairment of the left arm.

On June 9, 2006 appellant requested an additional schedule award. She submitted an August 3, 2005 work capacity evaluation report from Dr. Ditzler who noted that appellant could work full time subject to restrictions. On July 26, 2006 the Office requested that Dr. Ditzler provide an evaluation of permanent impairment for appellant's accepted left shoulder.

In reports dated April 24 and September 13, 2006, Dr. Ditzler noted appellant's complaints of persistent discomfort of the left shoulder. He noted significant pain with range of motion of the left shoulder and diagnosed impingement syndrome of the left shoulder. Dr. Ditzler deferred an impairment rating until a magnetic resonance imaging (MRI) scan of the left shoulder was obtained. An MRI scan of the left shoulder, dated December 26, 2006, revealed lateral down sloping of the acromion, a large distal acromial osteophyte with edema and subacromial fluid, no discrete tendon tears, degenerative bony changes and severe tendinopathy at the distal infraspinas.

In a telephone call log dated November 9, 2006, the claims examiner noted that Dr. Ditzler advised that appellant had not reached maximum medical improvement and would require three weeks of physical therapy.

In a letter dated February 7, 2007, the Office again requested that Dr. Ditzler provide an impairment rating for appellant's accepted left shoulder condition. On March 14, 2007 the physician advised that appellant reached maximum medical improvement on February 21, 2007. He noted findings of flexion of 120 degrees, extension of 20 degrees, abduction of 110 degrees, adduction of 20 degrees, internal rotation of 65 degrees and external rotation of 45 degrees. Dr. Ditzler opined that in accordance with the A.M.A., *Guides* appellant had a 13 percent permanent impairment of the left upper extremity.

In a report dated April 6, 2007, an Office medical adviser concurred that appellant sustained a 13 percent permanent impairment of the left arm. He stated that flexion of 120 degrees represented four percent impairment;[10] extension of 20 degrees was two percent impairment;[11] abduction of 110 degrees represented three percent impairment;[12] adduction of 20

[7] *Id.*

[8] *Id*. at 479, Figure 16-46.

[9] *Id.*

[10] *Id*. at 476, Figure 16-40.

[11] *Id.*

[12] *Id*. at 477, Figure 16-43.

degrees was one percent impairment;[13] internal rotation of 65 degrees was two percent impairment;[14] and external rotation of 45 degrees was one percent impairment.[15] The medical adviser added the loss of range of motion values for the left shoulder to total 13 percent. Dr. Ditzler opined that maximum medical improvement was on February 21, 2007. As appellant previously was rated with five percent impairment for the left arm, she had an additional eight percent impairment of the left arm.

In a decision dated April 18, 2007, the Office granted appellant a schedule award for eight percent permanent impairment of the left upper extremity. The period of the award was from February 21 to August 14, 2007.

## ***LEGAL PRECEDENT***

The schedule award provision of the Federal Employees' Compensation Act[16] and its implementing regulations[17] 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 regulation as the appropriate standard for evaluating schedule losses.

## ***ANALYSIS***

The Office accepted appellant's claim for left shoulder strain/sprain and impingement syndrome. It granted his schedule awards representing 13 percent impairment on November 6, 2003 and April 18, 2007. Appellant contends that she has greater than 13 percent permanent impairment of the left upper extremity.

On March 14, 2007 Dr. Ditzler advised that appellant reached maximum medical improvement on February 21, 2007. He found that appellant sustained a total of 13 percent impairment of the left upper extremity in accordance with the A.M.A., *Guides*, based on loss of shoulder motion. On examination, Dr. Ditzler noted flexion of 120 degrees, extension of 20 degrees, abduction of 110 degrees, adduction of 20 degrees, internal rotation of 65 degrees, and external rotation of 45 degrees. He opined that this represented 13 percent permanent impairment to the left upper extremity.

[13] *Id.*

[14] *Id*. at 479, Figure 16-46.

[15] *Id.*

[16] 5 U.S.C. § 8107.

[17] 20 C.F.R. § 10.404 (1999).

The Office medical adviser reviewed the report of Dr. Ditzler and agreed with his impairment rating. Flexion of 120 degrees represents four percent impairment;[18] extension of 20 degrees is a two percent impairment;[19] abduction of 110 degrees is a three percent impairment;[20] adduction of 20 degrees is one percent impairment;[21] internal rotation of 65 degrees represents two percent impairment;[22] and external rotation of 45 degrees is one percent impairment.[23] This totals 13 percent impairment based on loss of motion to the left shoulder. The medical adviser opined that maximum medical improvement was on February 21, 2007. The medical evidence conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 13 percent impairment of the left upper extremity. Appellant did not submit any medical evidence supporting greater than 13 percent permanent impairment of the left upper extremity.

As she previously received a schedule award for five percent permanent impairment of the left upper extremity, she was entitled to an additional award of eight percent.

## ***CONCLUSION***

The Board finds that appellant sustained a 13 percent permanent impairment of the left upper extremity.

[18] *Id*. at 476, Figure 16-40.

[19] *Id.*

[20] *Id*. at 477, Figure 16-43.

[21] *Id.*

[22] *Id*. at 479, Figure 16-46.

[23] *Id.*

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2008
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