

In the Matter of the Compensation of  
**JUAN L. GODINEZ, Claimant**

WCB Case No. 12-00796

ORDER ON REVIEW

Ransom Gilbertson Martin et al, Claimant Attorneys  
Gary Wallmark, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lanning and Langer.

Claimant requests review of Administrative Law Judge (ALJ) Fulsher's order that affirmed an Order on Reconsideration that awarded 5 percent whole person impairment for a left shoulder condition. On review, the issue is extent of permanent disability (impairment).

We adopt and affirm the ALJ's order with the following supplementation.

Claimant seeks an impairment value for a chronic condition significantly limiting repetitive use of his left shoulder.<sup>1</sup> Claimant relies on *Lynette M. Miller*, 58 Van Natta 2881 (2006).

In *Miller*, the medical arbiter was asked to indicate and explain whether the claimant was "significantly limited in the repetitive use of the involved shoulder due to a diagnosed chronic and permanent medical condition arising out of the accepted condition." 58 Van Natta at 2884. The arbiter responded that the claimant was "significantly limited in her ability to repetitively use her left shoulder to lift and transfer patients/weight due to her accepted diagnosis of tendonitis of that shoulder." *Id.*

We interpreted the doctor's specific response to the question posed to mean that the claimant was significantly limited in her ability to repetitively use her left shoulder, and the additional information the doctor provided included an example of such activities. We did not construe the doctor's response to mean that the claimant's limitation on the repetitive use of her shoulder was limited only to

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<sup>1</sup> Under OAR 436-035-0019(1)(g), "[a] worker is entitled to a 5% chronic condition impairment value \* \* \* when a preponderance of medical opinion establishes that, due to a chronic and permanent medical condition, the worker is significantly limited in the repetitive use of [the shoulder]."

Because the Notice of Closure issued on November 9, 2011, the applicable standards are found in WCD Admin. Order 10-051 051 (eff. June 1, 2010). See OAR 436-035-0003(1).

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lifting and transferring patients/weight. *Id.* at 2884-85. Under such circumstances, based on the medical arbiter's opinion, we found the claimant entitled to a value under the standards for a "chronic condition" of her left shoulder.

Here, in contrast, Dr. Ware, the medical arbiter, was specifically asked whether claimant had "a significant limitation in repetitive use of his left shoulder *above chest level* [.]" (Ex. 25-2) (Emphasis added). Dr. Ware responded affirmatively, specifically explaining that claimant "should not *lift* materials exceeding 20 pounds *above shoulder level* with his left arm [.]" (*Id.*) (Emphasis added). Thus, unlike the unqualified limitation in *Miller*, Dr. Ware specifically qualified the limitation on repetitive use of claimant's left arm and shoulder to the lifting of materials exceeding 20 pounds above shoulder level.

Because the limitation is qualified in this manner, we find it insufficient to establish entitlement to a "chronic condition" impairment value. *See Ryan T. Grassman*, 62 Van Natta 270, 273 (2010) (lifting restrictions by themselves found insufficient to establish a chronic condition significantly limiting repetitive use of the thoracic spine); *cf. Timothy R. Gilbert*, 64 Van Natta 58, 61 (2012) (medical arbiter's statement that the claimant was limited in repetitive use of his lumbar spine, along with his unqualified restriction against stooping, crouching, and crawling, established a "chronic condition"). Consequently, we affirm.

#### ORDER

The ALJ's order dated May 14, 2012 is affirmed.

Entered at Salem, Oregon on October 15, 2012