United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 20-1068**
	)	**Issued: April 15, 2025**
U.S. POSTAL SERVICE, CITY COLLEGES OF CHICAGO POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 22, 2020 appellant filed a timely appeal from an October 25, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). However, appellant subsequently withdrew her request.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that following the October 25, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish greater than 25 percent permanent impairment of her right upper extremity or greater than 29 percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation; and (2) whether OWCP properly determined appellant's pay rate for schedule award purposes.

FACTUAL HISTORY

On May 15, 2007 appellant, then a 58-year-old distribution/window clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome (CTS) and bilateral cubital tunnel syndrome as a result of repetitive factors of her federal employment, including sorting and throwing mail.[4] She retired effective June 2, 2007. On April 14, 2008 OWCP accepted the claim for bilateral CTS and a right ulnar lesion and authorized appropriate surgical procedures.[5]

On September 15, 2010 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated August 25, 2011, OWCP granted appellant a schedule award for 5 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity. The award ran for 46.8 weeks of compensation for the period May 4, 2011 through March 26, 2012. The weight of the medical opinion evidence was accorded to the district medical adviser (DMA) based upon his rating of appellant's accepted bilateral CTS and a right ulnar lesion condition.

On September 20, 2011 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 21, 2012. By decision dated June 11, 2012, OWCP's hearing representative set aside the August 25, 2011 decision and remanded the case for OWCP to provide its DMA with newly-submitted evidence and, following further development, issue a *de novo* decision regarding appellant's bilateral upper extremity impairments under the applicable provisions of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[6]

In a report dated July 15, 2012, the DMA recommended that appellant undergo a second opinion evaluation.

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[4] The present claim was assigned OWCP File No. xxxxxx896 by OWCP. Appellant also has a claim under OWCP File No. xxxxxx709 for a traumatic injury on February 7, 2003, when she was hit in the back with an all-purpose container. That claim was accepted for aggravation of fibromyalgia, and cervical and lumbar radiculopathy. Appellant's claims have not been administratively combined by OWCP.

[5] Appellant underwent left CTS release surgery on September 20, 2009; right CTS release surgery on July 11, 2008; and right ulnar nerve entrapment cubital tunnel elbow surgery on November 6, 2008.

[6] A.M.A., *Guides* (6th ed. 2009).

OWCP referred appellant to Dr. Allan Brecher, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Brecher reported on September 28, 2012 that appellant had eight percent permanent impairment of the right upper extremity and seven percent permanent impairment of the left upper extremity.

The DMA reviewed the case file again on November 12, 2012 and determined that appellant was not entitled to an increased schedule award.

By decision dated December 7, 2012, OWCP denied the claim for an increased schedule award.

On December 26, 2012 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated February 4, 2013, OWCP's hearing representative conducted a preliminary review, set aside the December 7, 2012 decision, and remanded the case to OWCP for a supplemental opinion from Dr. Brecher, who was to provide an assessment of upper extremity permanent impairment including consideration of any preexisting conditions.

On March 26, 2013 Dr. Brecher affirmed his prior rating.

By decision dated May 15, 2013, OWCP again denied appellant's claim for an increased schedule award.

On May 16, 2013 OWCP expanded the acceptance of appellant's claim to include disorders of bursae and tendons in the right shoulder region.

On June 10, 2013 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated August 5, 2013, OWCP's hearing representative found that the case was not in posture for a hearing and vacated OWCP's May 15, 2013 decision. He remanded the case to OWCP for further development, including referral of appellant for a new second opinion evaluation pursuant to the A.M.A., *Guides* and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*).

OWCP referred appellant to Dr. James Elmes, a Board-certified orthopedic surgeon, for a new second opinion impairment evaluation. In a January 23, 2014 report, Dr. Elmes related that appellant had no ratable permanent impairment due to her bilateral CTS and right cubital tunnel conditions; however, if shoulder impingement were an accepted condition she would be entitled to a schedule award for 20 percent permanent impairment of the right and left shoulders.

On February 17, 2014 the DMA reviewed the record again and concluded that appellant was not entitled to an increased schedule award.

By decision dated March 12, 2014, OWCP again denied the claim for an increased schedule award. It accorded the weight of the medical opinion evidence to the DMA.

On April 9, 2014 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on July 30, 2014.

By decision dated October 21, 2014, OWCP's hearing representative set aside the March 12, 2014 decision and remanded the case to OWCP to obtain a supplemental report from Dr. Elmes.

In a supplemental report dated December 1, 2014, Dr. Elmes affirmed his prior opinion.

On March 6, 2015 a DMA reviewed the case record and concluded that appellant was not entitled to an increased schedule award.

By decision dated March 11, 2015, OWCP again denied appellant's claim for an increased schedule award. It accorded the weight of the medical opinion evidence to the DMA.

On April 3, 2015 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated July 8, 2015, OWCP's hearing representative conducted a preliminary review and found the case not in posture for a hearing. She set aside the March 11, 2015 decision and remanded the case to OWCP for referral to a new second opinion physician for a report on whether appellant's shoulder conditions were temporary or permanent and for an additional bilateral upper extremity permanent impairment rating.

OWCP referred appellant to Dr. Salman Chaudri, an osteopath Board-certified in orthopedic surgery, for a second opinion evaluation. Dr. Chaudri rendered a report on April 28, 2016. He opined that appellant's employment duties could have caused bilateral shoulder impingement; however, the condition had resolved.

On May 25, 2016 OWCP expanded the acceptance of the claim to include temporary aggravation of bilateral shoulder impingement, resolved as of May 4, 2011.

Following review by a DMA of the case file on May 25, 2016, by decision dated June 7, 2016, OWCP again denied appellant's claim for an increased schedule award. It accorded the weight of the medical evidence to the DMA.

On July 5, 2016 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on December 29, 2016.

By decision dated January 30, 2017, OWCP's hearing representative vacated OWCP's June 7, 2016 decision and remanded the case to OWCP to update the statement of accepted facts (SOAF) and obtain a supplemental opinion from Dr. Chaudri.

Following further development, OWCP determined that a referral to another second opinion physician was necessary and referred appellant to Dr. Theodore Suchy, an osteopath Board-certified in orthopedic surgery. Dr. Suchy reported on June 29, 2017 that appellant had eight percent permanent impairment of the right upper extremity, based upon median and ulnar nerve impairment, and five percent permanent impairment of the left upper extremity for median nerve permanent impairment.

On August 18, 2017 the DMA reviewed the case record and concluded that appellant was not entitled to an increased schedule award.

By decision dated August 24, 2017, OWCP again denied appellant's claim for an increased schedule award. It accorded the weight of the medical opinion evidence to the DMA.

On September 18, 2017 appellant requested a hearing before an OWCP hearing representative. Following a preliminary review, by decision dated December 5, 2017, an OWCP hearing representative set aside the August 24, 2017 decision and remanded the case to OWCP to combine OWCP File No. xxxxxx709 with the current claim and to then obtain a supplemental report from Dr. Suchy. If Dr. Suchy was unwilling to provide the requested information, OWCP was directed to refer appellant for a new second opinion evaluation.

Following further development with Dr. Suchy, OWCP referred appellant along with a SOAF to Dr. Brecher for a second opinion impairment evaluation. In a May 30, 2018 report, Dr. Brecher opined that appellant had 18 percent permanent impairment of the right upper extremity and 18 percent permanent impairment of the left upper extremity.

In an August 1, 2018 report, the DMA related that Dr. Brecher's and Dr. Suchy's examination findings differed and recommended that a new second opinion impairment evaluation be obtained. The DMA also found that the date of maximum medical improvement (MMI) was undetermined.

OWCP issued a new SOAF on October 4, 2018 and referred appellant to Dr. Elmes, for a second opinion impairment evaluation. In a January 24, 2019 report, Dr. Elmes reviewed the medical evidence, including the objective studies of record, along with his previous impairment reports. He noted appellant's complaints of bilateral shoulder pain, bilateral hand pain, and bilateral elbow pain and provided examination findings, including three measurements of the goniometer for the bilateral shoulders, elbows, wrists and cervical and lumbar spine. Dr. Elmes noted that appellant had tenderness anteriorly and posteriorly in the right shoulder and mildly on the lateral aspect with no atrophy, crepitus or swelling and a negative drop-arm test. Appellant had mild positive Neer abduction test. Under the diagnosis-based impairment (DBI) methodology, Dr. Elmes found, under Table 15-5 page 402 of the A.M.A., *Guides*, that appellant had Class 1 or 1 percent impairment for shoulder impingement syndrome. Under the range of motion (ROM) impairment methodology under Table 15-34 page 475, he found that for the right shoulder flexion 80 degrees equaled 9 percent impairment, extension 40 degrees equaled 1 percent impairment; abduction 80 degrees equaled 6 percent impairment; adduction 30 degrees equaled 1 percent impairment; external rotation 40 degrees equaled 2 percent impairment; internal rotation 50 degrees equaled 2 percent impairment, for a total of 21 percent right upper extremity impairment. For the left shoulder, Dr. Elmes found that: flexion 80 degrees equaled 9 percent impairment; extension 30 degrees equaled 1 percent impairment; abduction 80 degrees equaled 6 percent impairment; adduction 30 degrees equaled 1 percent impairment; external rotation 50 degrees equaled 2 percent impairment; and internal rotation to 60 degrees equaled 2 percent impairment, for a total of 21 percent left upper extremity impairment. He opined that as the ROM impairment methodology of the A.M.A., *Guides* yielded the greater impairment, appellant had 21 percent permanent impairment of the right shoulder and 21 percent permanent impairment of the left shoulder. Dr. Elmes further opined that no additional impairment was recommended for the right and left CTS, right cubital tunnel, and right and left elbow conditions as his review of the additional medical records and appellant's January 24, 2019 evaluation was unchanged from his January 16, 2014 report. Regarding appellant's cervical condition, he related that while her March 28, 2008

electromyogram (EMG) studies noted C5-6 radiculopathy, and October 13, 2010 and March 11, 2011 EMG studies were within normal limits, except for a slight delay at the elbow level ulnar nerve on October 13, 2010.

In a February 21, 2019 report, Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving an OWCP DMA, reviewed Dr. Elmes' findings and found that appellant reached MMI on January 24, 2019. He also concurred with Dr. Elmes' impairment findings, as she had 21 percent permanent impairment for the right upper extremity and 21 percent permanent impairment for the left upper extremity based on the ROM methodology for her shoulder conditions, which yielded the greater impairment over that of the DBI rating. For the right upper extremity, the DMA combined the 21 percent shoulder impairment with the prior, nonoverlapping award of 10 percent impairment to find a total impairment of 29 percent. From the total impairment of 29 percent, he subtracted the 10 percent prior award and found that appellant was due an additional award of 19 percent right upper extremity impairment. For the left upper extremity, the DMA combined the 21 percent shoulder impairment with the prior, nonoverlapping award of 5 percent left upper extremity impairment, to find a total impairment of 25 percent. From the total impairment of 25 percent left upper extremity impairment, he subtracted the 5 percent prior award and found that the additional award now due was 20 percent left upper extremity impairment.

By decision dated March 19, 2019, OWCP awarded appellant an increased schedule award of 19 percent (for a total of 29 percent) permanent impairment of the right upper extremity and an increased schedule award of 20 percent (for a total of 25 percent) permanent impairment of the left upper extremity as a result of her bilateral shoulder conditions. The award ran for 121.68 weeks for the period January 24, 2019 to May 24, 2021. OWCP determined that appellant's weekly pay rate for schedule award purposes was $821.46, effective June 2, 2007.[7]

On April 17, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated April 18, 2019, OWCP amended its March 19, 2019 decision to reflect a correct calculation of the consumer price index (CPI).

A telephonic hearing was held on August 12, 2019.

Subsequent to the hearing, OWCP received statements from appellant from May 16 to September 16, 2019. Also received were medical records, treatment notes, and diagnostic test results dated December 29, 2015 through February 13, 2019.

By decision dated October 25, 2019, OWCP's hearing representative affirmed OWCP's March 19, 2019 decision, which was amended on April 18, 2019.

[7] The case record, however, contains conflicting evidence regarding appellant's pay rate. During an April 4, 2012 hearing, appellant testified that her annual salary was $48,642.00. The case record contains an earnings and leave statement which indicates a pay rate of $48,620.00 as of May 18, 2007.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA[8] and its implementing regulations[9] 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, FECA 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. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[10] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[11] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[12]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With regard to the shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the class of diagnosis (CDX) is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and grade modifier for clinical studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13]

Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

> "As the [A.M.A.,] *Guides* caution that if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the determination of impairment, the CE [claims examiner] should provide this information (via the updated instructions noted above) to the rating physician(s).

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] *Id*. *See also R.C.*, Docket No. 20-0274 (issued May 13, 2021); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[11] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

[12] *R.C., supra* note 10; *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[13] *See* A.M.A., *Guides* 405-12. Table 15-5 also provides that, if motion loss is present for a claimant with certain diagnosed conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such a ROM assessment stands alone and is not combined with a DBI rating. *Id*. at 401-05, 475-78.

"Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify (1) the methodology used by the rating physician (*i.e.*, DBI or ROM) and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A.,] Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.* (Emphasis in the original.)"

The FECA Bulletin further provides:

"If the rating physician provided an assessment using the DBI method and the [A.M.A.,] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE.

"If the medical evidence of record is not sufficient for the DMA to render a rating on ROM where allowed, the DMA should advise as to the medical evidence necessary to complete the rating. However, the DMA should still render an impairment rating using the DBI method, if possible, given the available evidence.[14]"

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[15]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish greater than 25 percent permanent impairment of her right upper extremity or greater than 29 percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

By decision dated August 25, 2011, OWCP granted appellant a schedule award for 5 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity for her accepted bilateral CTS and a right ulnar lesion condition.

Following a complex procedural history, OWCP issued an updated October 4, 2018 SOAF and referred appellant to Dr. Elmes for another second opinion reevaluation. In his January 24, 2019 report, Dr. Elmes reviewed the SOAF and the medical evidence of record along with his previous impairment reports. He noted appellant's examination findings and that he took three

[14] FECA Bulletin No. 17-06 (issued May 8, 2017).

[15] *See supra* note 11 at Chapter 2.808.6f (March 2017); *see also D.J.*, Docket No. 19-0352 (issued July 24, 2020).

measurements with the goniometer for measuring the bilateral shoulders, elbows, wrists and cervical and lumbar spine.

Under the DBI methodology for both shoulders, Dr. Elmes found, under Table 15-5 of the A.M.A., *Guides,* that appellant had Class 1 or 1 percent permanent impairment for shoulder impingement syndrome. For the right shoulder, under the ROM impairment methodology, he found that under Table 15-34 page 475, flexion 80 degrees equaled 9 percent impairment, extension 40 degrees equaled 1 percent impairment, abduction 80 degrees equaled 6 percent impairment, adduction 30 degrees equaled 1 percent impairment, external rotation 40 degrees equaled 2 percent impairment, internal rotation 50 degrees equaled 1 percent impairment, for a total of 21 percent right upper extremity impairment. For the left shoulder, under the ROM impairment methodology, Dr. Elmes found, under Table 15-34 page 475, that flexion 80 degrees equaled 9 percent impairment, extension 30 degrees equaled 1 percent impairment, abduction 80 degrees equaled 6 percent impairment, adduction 30 degrees equaled 1 percent impairment, external rotation 50 degrees equaled 2 percent impairment, and internal rotation to 60 degrees equaled 2 percent impairment, for a total of 21 percent left upper extremity impairment. He opined that as the ROM impairment methodology of the A.M.A., *Guides* yielded the greater impairment, appellant had 21 percent permanent impairment of the right shoulder and 21 percent permanent impairment of the left shoulder.

Dr. Elmes further opined that no additional impairment was recommended for the bilateral CTS, right cubital tunnel, and bilateral elbow conditions. He reviewed appellant's current examination along with appellant's medical records and his previous report of January 16, 2014, which indicated that the only abnormality in the EMG studies was a slight delay at the elbow level ulnar nerve on October 13, 2010, but was not supported by clinical findings. As there were no current objective findings, Dr. Elmes opined that no additional impairment was recommended for the right and left CTS, right cubital tunnel, and right and left elbow conditions.

In accordance with its procedures,[16] OWCP properly referred the evidence of record to DMA Dr. Katz, who reviewed the clinical findings of Dr. Elmes. In his report of February 21, 2019, Dr. Katz opined that appellant reached MMI on January 24, 2019. He further concurred with the impairment findings of Dr. Elmes. This included that appellant had 21 percent permanent impairment for the right upper extremity and 21 percent permanent impairment for the left upper extremity based on the ROM methodology for her shoulder conditions, which yielded a greater impairment than the DBI ratings of those conditions, and that there was no additional impairment, beyond that previously awarded, for the bilateral CTS and right ulnar lesion conditions. With regard to the right upper extremity, the DMA combined the 21 percent shoulder impairment with the prior, nonoverlapping award of 10 percent impairment to find a total impairment rating of 29 percent. OWCP awarded appellant an additional 19 percent right upper extremity impairment. For the left upper extremity, the DMA combined the 21 percent shoulder impairment with the prior, nonoverlapping award of 5 percent left upper extremity impairment, to find a total impairment rating of 25 percent. From the total impairment rating of 25 percent left upper

[16] *Id*.

extremity impairment, the DMA subtracted the 5 percent prior award and found that the additional award due was 20 percent left upper extremity impairment.

The Board finds that OWCP properly determined that the clinical findings and reports of Dr. Elmes and the DMA constitute the weight of the medical evidence.[17] There is no probative medical evidence of record demonstrating greater impairment than that previously awarded.[18] Therefore, appellant has not met her burden of proof to establish an increased schedule award for either the left or right upper extremities.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

LEGAL PRECEDENT -- ISSUE 2

Section 8102 of FECA[19] provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.

Under FECA, monetary compensation for disability or impairment due to an employment injury is paid as a percentage of the pay rate.[20] Section 8101(4) provides that monthly pay means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.[21] OWCP procedures provide that, if the employee did not stop work on the date of injury or immediately afterwards, defined as the next day, the record should indicate the pay rate for the date of injury and the date disability began. The greater of the two should be used in computing compensation, and if they are the same, the pay rate should be effective on the date disability began.[22]

Where an employee has a recurrence of disability more than six months after resuming regular, full-time employment with the employing establishment, under section 8101(4) of FECA,

[17] *J.S.*, Docket No. 19-1567 (issued April 1, 2020); *J.H.*, Docket No. 18-1207 (issued June 20, 2019); *M.C.*, Docket No. 15-1757 (issued March 17, 2016).

[18] *See J.S., id.*; *J.M.*, Docket No. 18-1334 (issued March 7, 2019).

[19] 5 U.S.C. § 8102.

[20] *See id.* at §§ 8105-8107.

[21] *Supra* note 1 at § 8101(4). *J.S.*, Docket No. 17-1277 (issued April 20, 2018); *K.B.*, Docket No. 13-0569 (issued June 17, 2013).

[22] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.5a(3) (September 2011).

the employee is entitled to have his or her compensation increased based on his pay at the time of this first recurrence of disability.[23]

In applying section 8101(4), the statute requires OWCP to determine monthly pay by determining the date of the greater pay rate, based on the date of injury, date of disability, or the date of recurrent disability. The Board has held that rate of pay for schedule award purposes is the highest rate which satisfies the terms of section 8101(4).[24] Where an injury is sustained over a period of time, the date of injury is the date of last exposure to the employment factors causing the injury.[25]

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision.

OWCP calculated appellant's schedule award using a weekly pay rate of $821.46, effective June 2, 2007, which equates to an annual salary of $42,715.92. However, during an April 4, 2012 hearing, appellant testified that her annual salary was $48,642.00, which equates to a weekly pay rate of $935.42. The Board notes that the case record contains an earnings and leave statement which indicates that appellant's annual salary as of May 18, 2007, less than one month prior to appellant's date of disability, was $48,620.00, which equates to a weekly pay rate of $935.00. Therefore, it appears that the correct weekly pay rate for schedule award purposes was approximately $935.00. As there is conflicting evidence as to the correct weekly pay rate for schedule award purposes, the Board finds that the case must be remanded for OWCP to determine the correct weekly pay rate for appellant's schedule award, to be followed by a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than 25 percent permanent impairment of her right upper extremity or greater than 29 percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation. The Board further finds that the case is not in posture for decision with regard to whether OWCP properly determined appellant's pay rate for schedule award purposes.

[23] *Supra* note 1 at § 8101(4); *J.S., supra* note 21; *see Jon L. Hoagland*, 57 ECAB 635 (2006).

[24] *Robert A. Flint*, 57 ECAB 369, 374 (2006).

[25] *See Barbara A. Dunnavant*, 48 ECAB 517 (1997).

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 15, 2025
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board