

of the left upper extremity, more than 12 percent permanent impairment of each lower extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

On August 2, 1999 appellant, then a 45-year-old illustrator, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 1999 he sustained an injury to his low back when moving a cabinet while in the performance of duty. In a supplemental statement, he described complaints related to his left shoulder, low back and right wrist, related to the April 16, 1999 employment incident. By decision dated August 31, 1999, OWCP accepted appellant's claim for right wrist strain, left rotator cuff tear, and lumbar strain.

On December 20, 2000 appellant filed a claim for a schedule award (Form CA-7) in connection with his accepted back conditions. OWCP developed the claim and, by decision dated February 27, 2001, granted him a schedule award for 42 percent permanent impairment of the right upper extremity, 24 percent permanent impairment of the left upper extremity, 3 percent permanent impairment of the right lower extremity, and 10 percent permanent impairment of the left lower extremity. The period of the award ran for 228.96 weeks from January 9, 2001 through May 30, 2005.³

Appellant retired from the employing establishment on December 15, 2005. An April 26, 2010 statement of accepted facts (SOAF) listed his accepted conditions as right carpal tunnel syndrome, bilateral sprain of shoulders and upper arms/rotator cuff, bilateral acromioclavicular sprain of the shoulders, displacement of the lumbar intervertebral disc, and bilateral primary osteoarthritis of the shoulder.

On November 30, 2009 appellant filed a claim for an increased schedule award (Form CA-7) for conditions related to his accepted back injury. By decision dated February 22, 2011, OWCP granted him a schedule award for an additional three percent permanent impairment of the right upper extremity. The period of the award ran for 9.36 weeks from July 21 through September 24, 2009.

On August 2, 2017 appellant filed another claim for an increased schedule award (Form CA-7) for conditions related to his accepted back injury. A July 27, 2017 report from Dr. John Ellis, a Board-certified family practitioner and occupational medicine specialist, provided a history of appellant's injury and his findings on examination. Dr. Ellis opined that appellant had 11 percent permanent impairment of the right upper extremity, 26 percent permanent impairment of the left upper extremity, and 12 percent permanent impairment each of the right and left lower

³ In OWCP File No. xxxxxx055, appellant filed an occupational disease claim (Form CA-2) on June 20, 1996. OWCP accepted left olecranon spur and granted him a schedule award for seven percent permanent impairment of the left lower extremity. Additionally, OWCP File No. xxxxxx500 granted appellant a schedule award for two percent permanent impairment of the right upper extremity. These claims have been administratively combined with the present claim and OWCP File No. xxxxxx490 serves as the master file.

extremities under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

On August 23, 2017 OWCP routed Dr. Ellis' report, an updated SOAF, the case file, and a set of questions, to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for review. The SOAF related that this statement superseded all previous versions. It listed appellant's accepted upper extremity conditions as olecranon bursitis, left; bilateral carpal tunnel syndrome; left ulnar nerve injury, and left ulnar nerve lesion.

In an August 25, 2017 report, Dr. Harris, OWCP's DMA, disagreed with the ratings calculated by Dr. Ellis. He noted that there was no basis for an increased award to the right upper extremity because appellant had previously received schedule award compensation for 45 percent permanent impairment for his right shoulder impairment under the present claim, and an additional 3 percent under OWCP File No. xxxxxx500. The DMA further noted that there was no basis for an increased schedule award to the left upper extremity because appellant had already received schedule award compensation for 24 percent permanent impairment under the present claim, and an additional 7 percent under OWCP File No. xxxxxx055.

By letter dated August 30, 2017, OWCP requested that Dr. Ellis review the report of the DMA, and indicate whether he agreed with the DMA's findings.

In a September 6, 2017 report, Dr. Ellis noted that he reviewed the DMA's report. He explained that he did not rate the upper extremities because appellant had already received schedule award compensation for 45 percent permanent impairment of the right upper extremity and 24 percent permanent impairment of the left upper extremity. Dr. Ellis further noted that his July 27, 2017 examination found that appellant did not have increased impairment of the upper extremities. He opined that appellant had 3 percent permanent impairment of the right lower extremity and 10 percent of the left lower extremity, noting that the range of motion method could not be utilized for rating the lower extremities, as the impairment should be rated for radiculopathy.

On September 26, 2017 OWCP routed Dr. Ellis' report to Dr. Harris, the DMA, for clarification.

In a September 27, 2017 report, Dr. Harris, the DMA, noted that he reviewed the SOAF and the medical records. He explained that Dr. Ellis' new report of September 6, 2017, did not provide any additional information regarding appellant's subjective complaints, or objective findings, and he was unable to determine if additional impairment was warranted. Dr. Harris recommended a referral to another physician, not previously connected with the case, in order to provide the requested information.

On November 8, 2017 OWCP referred appellant along with the August 23, 2017 SOAF and the medical record to Dr. Christopher Jordan, an orthopedic surgeon, for a second opinion examination.

⁴ A.M.A., *Guides* (6th ed. 2009).

In a December 20, 2017 report, Dr. Jordan noted that there was confusion as to which body part was involved. Appellant related that he believed he was there for an evaluation of his back, but the SOAF only refers to his arms, so Dr. Jordan was focusing his evaluation on appellant's upper extremities. Dr. Jordan noted appellant's history of injury and examination findings, and calculated his upper extremity impairment based on his bilateral carpal tunnel syndrome. He determined that the left ulnar nerve is assigned a default rating of 8 percent impairment and explained that, pursuant to Chapter 15.4f, page 448 of the A.M.A., *Guides*, when there were multiple simultaneous neuropathies, the first was given the full impairment, and the second was given 50 percent of the impairment rating. Dr. Jordan concluded that the left ulnar nerve rating would therefore be reduced to 4 percent, and the total left arm impairment was 12 percent. He concluded that appellant had 8 percent right upper extremity permanent impairment and 12 percent left upper extremity permanent impairment.

On January 24, 2018 OWCP routed Dr. Jordan's report to Dr. Harris, the DMA, for review. In a February 15, 2018 report, Dr. Harris, the DMA, concurred with Dr. Jordan's findings of 8 percent right upper extremity permanent impairment and 12 percent left upper extremity permanent impairment. However, he noted that since Dr. Jordan did not provide an evaluation of the left shoulder, he was "unable to determine if there is any impairment in the left upper extremity." Dr. Jordan indicated that appellant had reached maximum medical improvement on December 18, 2017.⁵

In a March 16, 2018 supplemental report, Dr. Harris, the DMA, reviewed the medical record and applied *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009) (*The Guides Newsletter*)⁶ to find that appellant had three percent permanent impairment of the right and left lower extremities for residual problems with moderate pain/impaired sensation from the right S1 lumbar radiculopathy (CDX 1C), five percent for residual problems with mild motor weakness from the right L5 lumbar radiculopathy (CDX 1C), one percent for residual problems with mild pain/impaired sensation from the right S1 lumbar radiculopathy (CDX 1C), and three percent for residual problems with mild motor weakness for the right S1 lumbar radiculopathy (CDX 1C). The DMA referred to the Combined Values Chart, A.M.A., *Guides*, page 604, and opined that this resulted in a total of 12 percent permanent impairment of the right and left lower extremities.

By decision dated April 13, 2018, OWCP granted appellant a schedule award for zero percent permanent impairment of the right upper extremity, zero percent permanent impairment of the left upper extremity, an additional nine percent permanent impairment of the right lower extremity, and an additional two percent permanent impairment of the left lower extremity.

⁵ On March 5, 2018 OWCP requested clarification from the second opinion physician. However, per a March 14, 2018 memorandum of file, the request for clarification was cancelled because the second opinion and DMA only addressed the upper extremities when the request was for both the upper and lower (and the treating physician and appellant only addressed the lower). As a remedy, the memorandum proposed routing the case for a new referral to a DMA only with regard to the lower extremity.

⁶ Federal (FECA) Procedure Manual, Chapter 3.700, Exhibit 1 (January 2010); *The Guides Newsletter* is included as Exhibit 4.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁷ and its implementing federal regulations,⁸ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁹ For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.¹⁰

Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment for the class of diagnosis (CDX) condition, which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS). The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). The grade modifiers are used on the net adjustment formula described above to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C, by the calculated net adjustment.¹¹

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text. In Table 15-23, grade modifier levels (ranging from zero to four) are described for the categories of test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down based on functional scale, an assessment of impact on daily living activities (*QuickDASH*).¹²

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.¹³

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* at § 10.404(a).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (March 2017).

¹¹ *Supra* note 4 at page 387.

¹² *See B.W.*, Docket No. 18-0901 (issued January 24, 2019).

¹³ *See J.K.*, Docket No. 16-1361 (issued April 18, 2017); *T.S.*, Docket No. 09-1308 (issued December 22, 2009); 20 C.F.R. § 10.404(d).

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.¹⁴

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, under FECA a schedule award is not payable for injury to the spine. In 1960, amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule, regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity, even though the cause of the impairment originated in the spine.

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* for decades has offered an alternative approach to rating spinal nerve impairments. OWCP has adopted this approach for rating permanent impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures, which memorializes proposed tables outlined in *The Guides Newsletter*.

ANALYSIS

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

On November 8, 2017 OWCP referred appellant for a second opinion examination with Dr. Jordan. The August 23, 2017 updated SOAF provided to Dr. Jordan and thereafter to Dr. Harris, was deficient as it did not list all of appellant's accepted upper extremity conditions, as previously noted in the April 26, 2010 SOAF. It only listed appellant's accepted upper extremity conditions. It failed to mention his accepted spinal condition. An accurate SOAF is especially important given the complex facts of this case. The SOAF should identify the percentage of schedule award previously granted for each permanent impairment. The Board has held that a medical opinion based on an incomplete SOAF is of reduced probative value.¹⁵ Moreover, OWCP's procedures specify that the SOAF must include all accepted conditions.¹⁶

It is well established that proceedings under FECA are not adversarial in nature and that while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.¹⁷ The Board finds that OWCP undertook development of the medical aspect of appellant's

¹⁴ *Supra* note 9.

¹⁵ *S.K.*, Docket No. 16-0273 (issued July 14, 2016); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600(a)(4) (October 1990).

¹⁶ *Id.*

¹⁷ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

schedule award claim, but failed to provide a complete SOAF. As previously noted, given the complex nature of this schedule award claim, an accurate SOAF is necessary. On remand OWCP should fully update the SOAF, noting all accepted conditions. Thereafter it shall refer appellant for a second opinion examination to determine the extent of any additional permanent impairment due to his accepted conditions. After such further development, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: August 12, 2019
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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