

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

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<b>T.T., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 18-1622</b>
	)	<b>Issued: May 14, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Lake Grove, OR, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 23, 2018 appellant filed a timely appeal from a July 17, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 has met his burden of proof to establish more than three percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

**FACTUAL HISTORY**

On January 19, 2017 appellant, then a 61-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on January 17, 2017, he sustained a right elbow fracture when

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

he slipped and fell while delivering mail in the performance of duty. He stopped work on the date of injury and did not return.<sup>2</sup> Appellant sought treatment with Dr. Shane R. Hanzlik, a Board-certified orthopedic surgeon. By decision dated January 31, 2017, OWCP accepted the claim for displaced fracture of olecranon process with intraarticular extension of the right ulna.

On February 1, 2017 appellant underwent an open reduction and internal fixation of the olecranon fracture by Dr. Hanzlik. The surgery was authorized by OWCP.

On January 22, 2018 appellant filed a claim for a schedule award (Form CA-7).

In a January 18, 2018 medical report and work capacity evaluation form (Form OWCP-5c), Dr. Hanzlik reported that appellant's displaced fracture of the olecranon process with intraarticular extension of right ulna had healed postsurgery. He opined that appellant had reached maximum medical improvement (MMI).

In a development letter dated January 30, 2018, OWCP requested that appellant submit an impairment evaluation from his attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> It afforded him 30 days to submit the requested information.

OWCP subsequently received a February 6, 2018 medical report, wherein Dr. Paul M. Puziss, a Board-certified orthopedic surgeon, discussed appellant's medical history, reviewed diagnostic testing, and provided findings on physical examination for the purpose of an impairment rating. Dr. Puziss discussed the initial right elbow x-rays taken at urgent care on January 18, 2017, as well as x-rays taken postsurgery on April 26 and October 16, 2017. He reported that appellant's current right elbow x-ray demonstrated a well-healed fracture with a subtle defect where the fracture had been located. Dr. Puziss diagnosed postopen reduction and internal fixation of right proximal olecranon fracture, possible mild traumatic arthritis of the right elbow joint, and right elbow stiffness mostly resolved. He requested a computerized tomography (CT) scan to better assess the extent of arthritis that appellant could have in his joint which would be relevant to his impairment rating, noting that sometimes stiffness was due to arthritis while other times it was due to the healed fracture.

In a February 9, 2018 diagnostic report, Dr. Evelyne Fliszar, a Board-certified diagnostic radiologist, reported that a CT scan of appellant's right upper extremity revealed a well-healed fracture of the proximal ulna, intact internal fixation hardware without evidence of complication, mild-to-moderate post-traumatic osteoarthritis of the elbow with three intraarticular bodies, and thickening of the distal portion of the biceps tendon suggestive of underlying biceps tendon pathology.

In a February 13, 2018 report, Dr. Puziss reviewed the right elbow CT scan and noted that appellant's physical examination remained unchanged. He reported that the right elbow CT scan

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<sup>2</sup> OWCP paid appellant wage-loss compensation on the supplemental rolls. Appellant retired from the employing establishment on July 31, 2017.

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

demonstrated a nicely healed fracture, but that there was mild-to-moderate post-traumatic osteoarthritis of the elbow. Dr. Puziss noted that the scan revealed three intraarticular loose bodies, a somewhat distally thickened biceps tendon, intact triceps tendon, and a third small intraarticular loose body located in the posterior elbow. He diagnosed post open-reduction and internal fixation of right proximal olecranon fracture, mildly moderate post-traumatic degenerative arthritis of the right elbow joint, loose bodies of the right elbow, and right elbow stiffness mostly resolved. Dr. Puziss discussed physical examination findings, noting that the lack of around 10 or 12 degrees of extension on the range of motion (ROM) examination most likely did not relate to the loose bodies.

In accordance with the sixth edition of the A.M.A., *Guides* Table 15-4, Elbow Regional Grid, Dr. Puziss assigned class 1 impairment with asymmetric arthritic changes noted on the CT imaging scan.<sup>4</sup> Using the diagnosis-based impairment (DBI) methodology he assigned a grade modifier of 1 for both functional history (GMFH) and physical examination (GMPE) due to a mild problem, and a grade modifier of 2 for clinical studies (GMCS) due to a moderate problem. Application of the net adjustment formula resulted in a score of one  $((1-1)+(1-1)+(2-1))$ , which warranted movement from the default rating of five percent one place to the right for a grade D value of six percent permanent impairment of the right upper extremity. Dr. Puziss noted that the imaging study demonstrated loose bodies which were currently not causing a loss of motion or locking. He reported that this could “someday change” and require surgery for removal of these loose bodies.

On April 20, 2018 OWCP routed Dr. Puziss’ reports, a statement of accepted facts, and the case file to Dr. Jovito Estaris, Board-certified in occupational medicine serving as an OWCP district medical adviser (DMA), for review and determination regarding whether appellant sustained permanent impairment of the right upper extremity in accordance with the sixth edition of the A.M.A., *Guides* and the date of MMI.

In a June 14, 2018 medical report, the DMA reviewed the case file, finding that appellant reached MMI on February 6, 2018, the date of Dr. Puziss’ examination. He reported that he disagreed with Dr. Puziss’ impairment rating because he used the diagnosis of loose bodies which was not a condition accepted by OWCP. Rather, the correct DBI impairment was for a fractured olecranon. The DMA further reported that Dr. Puziss’ impairment rating incorrectly assigned a GMCS of 2 as the physician utilized the CT scan which revealed loose bodies for diagnosis and placement in the grid. Since he used the GMCS to define the DBI, it could not be used in the net adjustment formula which meant that appellant was only entitled to the default five percent value for class 1 permanent impairment of loose bodies.

The DMA further utilized the DBI method for a right elbow fracture to calculate three percent permanent impairment of the right upper extremity. Using Table 15-4 of the A.M.A., *Guides*, he identified a diagnosis of right elbow fractured olecranon resulting in class 1 for residual symptoms with mild motion deficits with a default value of three percent.<sup>5</sup> The DMA assigned a

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<sup>4</sup> *Id.* at 399.

<sup>5</sup> *Id.*

GMFH of 1 due to pain over the right elbow and increase on straining,<sup>6</sup> a GMPE of 1 due to mild ROM limitation,<sup>7</sup> and no GMCS because the x-ray of the elbow was used to define the diagnosis and class. Application of the net adjustment formula resulted in a score of zero ((1-1)+(1-1)), warranting no movement from the default grade C value, resulting in three percent permanent impairment of the right upper extremity.

The DMA also calculated appellant's right upper extremity impairment using the ROM method. He utilized the ROM measurements and determined that, for the right elbow, 150 degrees forward flexion yielded zero percent impairment, 10 degrees extension yielded two percent impairment, 70 degrees pronation yielded one percent impairment, and 90 degrees supination yielded zero percent impairment, for a combined rating of three percent permanent impairment.<sup>8</sup> The DMA assigned a GMFH of 1<sup>9</sup> and a GMPE of 1 for motion deficit<sup>10</sup> which did not change the three percent impairment rating. He found that both the DBI and ROM methods yielded three percent permanent impairment of the right upper extremity.

By decision dated July 17, 2018, OWCP granted appellant a schedule award for three percent permanent impairment of the right upper extremity. It found that the date of MMI was February 6, 2018 and that the award covered a period of 9.36 weeks, running from February 6 to April 12, 2018.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>11</sup> and its implementing federal regulations,<sup>12</sup> 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.<sup>13</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>14</sup>

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<sup>6</sup> *Id.* at 406, Table 15-7.

<sup>7</sup> *Id.* at 408, Table 15-8.

<sup>8</sup> *Id.* at 474, Table 15-33.

<sup>9</sup> *Id.* at 477, Table 15-36.

<sup>10</sup> *Id.* at Table 15-35.

<sup>11</sup> 5 U.S.C. § 8107.

<sup>12</sup> 20 C.F.R. § 10.404.

<sup>13</sup> *Id.* at § 10.404(a).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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 respect to the elbow, reference is made to Table 15-4 (Elbow Regional Grid) beginning on page 398. After the class of diagnosis (CDX) is determined from the Shoulder Regional Grid (including identification of a default grade value), the impairment class is then adjusted by grade modifiers of GMFH, GMPE, and GMCS.<sup>15</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

FECA Bulletin No. 17-06<sup>16</sup> provides guidance in applying ROM or DBI methodologies in rating permanent impairment of the upper extremities.<sup>17</sup>

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.<sup>18</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than three percent permanent impairment of the right upper extremity, for which he previously received a schedule award.

Dr. Puziss based his impairment rating on loose bodies of the right elbow, a condition which has not been accepted as employment related.<sup>19</sup> The Board finds that appellant's impairment rating should be based on the accepted condition of displaced fracture of right olecranon.<sup>20</sup> Furthermore, Dr. Puziss failed to provide a well-rationalized opinion causally relating the condition of loose bodies to residuals of the January 17, 2017 right elbow fracture.<sup>21</sup> It is appellant's burden of proof to establish that he suffers from additional conditions as a result of the accepted employment-related injury.<sup>22</sup> Given the lack of rationalized evidence establishing a

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<sup>15</sup> A.M.A., *Guides* 494-531.

<sup>16</sup> The Bulletin advises that, if the A.M.A., *Guides* allows 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 claims examiner. See FECA Bulletin No. 17-06 (May 8, 2017). See also *D.F.*, Docket No. 17-1474 (issued January 26, 2018).

<sup>17</sup> *J.M.*, Docket No. 18-1387 (issued February 1, 2019).

<sup>18</sup> *Supra* note 14 at Chapter 2.808.6(f) (March 2017).

<sup>19</sup> *R.W.*, Docket No. 15-1121 (issued August 12, 2015).

<sup>20</sup> *G.I.*, Docket No. 11-0030 (issued October 13, 2011).

<sup>21</sup> OWCP's procedures provide that impairment ratings for schedule awards include those conditions accepted by OWCP as work related, and any preexisting permanent impairment of the same member or function. *Supra* note 14 at Chapter 2.808.5(d). See also *Raymond E. Gwynn*, 35 ECAB 247, 253 (1983).

<sup>22</sup> See *Charlene R. Herrera*, 44 ECAB 361 (1993).

work-related right elbow loose bodies injury, Dr. Puziss' report fails to establish an accurate permanent impairment rating of the right upper extremity causally related to the January 17, 2017 employment injury.<sup>23</sup>

The Board finds that the DMA properly utilized the medical evidence of record, Dr. Puziss' examination findings, and the sixth edition of the A.M.A., *Guides* in determining that appellant sustained three percent permanent impairment of the right upper extremity.<sup>24</sup> Using Table 15-4 of the A.M.A., *Guides*, the DMA identified a class 1 diagnosis of right elbow fracture olecranon for residual symptoms with mild motion deficits.<sup>25</sup> He explained the assignment of grade modifiers, reporting a GMFH of 1 due to pain over the right elbow and increase on straining,<sup>26</sup> a GMPE of 1 due to mild ROM limitation,<sup>27</sup> and no GMCS because the x-ray was used to define the impairment class. Application of the net adjustment formula resulted in a score of zero  $((1-1)+(1-1))$ , warranting no movement from the default grade C value, resulting in three percent permanent impairment of the right upper extremity.

The DMA further provided a proper rating based on the ROM method in accordance with FECA Bulletin No. 17-06 for rating upper extremity impairments.<sup>28</sup> He utilized Dr. Puziss' ROM measurements which yielded two percent impairment for 10 degrees extension and one percent impairment for 70 degrees pronation, amounting to a total three percent impairment.<sup>29</sup> Assignment of a GMFH of 1 and GMPE resulted in no change to the three percent impairment rating.<sup>30</sup> The DMA correctly determined that the ROM and DBI methods amounted to the same impairment rating, resulting in three percent permanent impairment of the right upper extremity.

The Board finds that the DMA applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Puziss' clinical findings and his calculations were mathematically accurate.<sup>31</sup> For these reasons, the Board finds that OWCP properly relied on the DMA's assessment of three percent permanent impairment of the right upper extremity in granting appellant a schedule award.<sup>32</sup>

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<sup>23</sup> *E.W.*, Docket No. 12-0772 (issued June 13, 2013).

<sup>24</sup> *R.V.*, Docket No. 17-0731 (issued June 7, 2017).

<sup>25</sup> *Supra* note 4.

<sup>26</sup> *Supra* note 6.

<sup>27</sup> *Supra* note 7.

<sup>28</sup> *Supra* note 16.

<sup>29</sup> *Supra* note 8.

<sup>30</sup> *Id.* at 477.

<sup>31</sup> *R.N.*, Docket No. 17-1123 (issued May 25, 2018).

<sup>32</sup> *M.J.*, Docket No. 13-598 (issued May 8, 2013).

On appeal appellant argues that the DMA found that Dr. Puziss' six percent impairment rating should be adjusted to five percent based on a class 1 grade C value. He asserts that he should be awarded the greater five percent impairment rating based on Dr. Puziss' examination as opposed to the three percent provided by the DMA who had never conducted a physical examination in his case. As noted above, the DMA explained that Dr. Puziss' impairment rating was based on the diagnosis of loose bodies, a condition which had not been accepted as a work-related condition. Thus, Dr. Puziss' rating fails to establish permanent impairment of the right upper extremity greater than the three percent previously awarded.

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 impairment.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish more than three percent permanent impairment of the right upper extremity, for which he previously received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 17, 2018 decision of the Office of Workers' Compensation Programs decision is affirmed.

Issued: May 14, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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