United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
	)	**Docket No. 18-0656**
and	)	**Issued: October 28, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On February 6, 2018 appellant, through counsel, filed a timely appeal from a December 22, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 18-0656.

On October 16, 2000 appellant, then a 45-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she lifted a parcel from her truck and injured her shoulder, arms, and neck while in the performance of duty. OWCP accepted her claim for cervical strain and sprain/strain of the bilateral shoulders and upper arm. It later expanded appellant's claim to accept the additional conditions of adhesive capsulitis of the bilateral shoulders, myalgia, and myositis.

On January 7, 2002 appellant filed a claim for a schedule award (Form CA-7).

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

By decision dated August 8, 2002, OWCP granted appellant a schedule award for 11 percent permanent impairment of the left arm and 9 percent permanent impairment of the right arm.

On April 13, 2006 appellant filed a claim for an increased schedule award (Form CA-7).

By decision dated July 27, 2007, OWCP granted appellant a schedule award for an additional 3 percent permanent impairment of the right upper extremity, for a combined 15 percent, and an additional 10 percent permanent impairment of the left upper extremity for a combined 18 percent.

On June 27, 2016 appellant filed a claim for an increased schedule award (Form CA-7).

On August 29, 2016 OWCP sent the medical record and a statement of accepted facts to an OWCP district medical adviser (DMA). In a report dated September 7, 2016, the DMA found no cervical spine impairment and no additional permanent impairment of her upper extremities. He noted that for the shoulders, the diagnoses of sprain, myalgia, myositis fell under diagnosis-based impairment (DBI) method under Table 15-5, page 401 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[2] and could be classified under shoulder pain and shoulder strain. However, since there was no rating for adhesive capsulitis it could also be rated using the range of motion (ROM) method based on Table 15-34, page 475 of the A.M.A., *Guides* and since that was the greatest rating for the shoulder region that would be the impairing condition. The DMA relied upon the ROM measurements from a functional capacity evaluation dated September 26, 2014, completed by a physical therapist.

In support of her claim for an increased schedule award, appellant submitted an impairment rating report from Dr. Catherine Watkins Campbell, a Board-certified physiatrist, dated September 28, 2016. Dr. Watkins Campbell provided physical examination findings including detailed ROM measurements of appellant's bilateral upper extremities. She used the DBI method of the A.M.A., *Guides* found in Table 15-5, Shoulder Regional Grid, for the diagnoses of shoulder sprain/strain. Dr. Watkins Campbell found that appellant had one percent right upper extremity impairment and two percent left upper extremity impairment pursuant to the A.M.A., *Guides*.

In a report dated November 1, 2016, a DMA reviewed Dr. Watkins Campbell's report and noted findings of a significant amount of symptom magnification, inconsistent ROM measurements, active ROM that did not match passive ROM, and significant exaggerated behaviors. He noted that a normal passive ROM precluded a diagnosis of adhesive capsulitis. The DMA noted that Dr. Watkins Campbell rated appellant's upper extremities for partial thickness rotator cuff tear of the left shoulder and a strain of the right shoulder. He provided a rating using the DBI method which confirmed the ratings of Dr. Watkins Campbell.

Appellant also submitted a November 18, 2016 report from Dr. Frederick S. Frost, a Board-certified physiatrist, who rated appellant based on the A.M.A., *Guides*, for the diagnosed conditions of sprain of the shoulder and upper arm. Dr. Frost opined that appellant sustained 12

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

percent impairment of the left upper extremity and 12 percent impairment of the right upper extremity.

By decision dated March 29, 2017, OWCP denied appellant's claim for an increased schedule award.

On April 11, 2017 appellant, through counsel, requested a telephonic hearing which was held on October 13, 2017. By decision dated December 22, 2017, an OWCP hearing representative affirmed the decision dated March 29, 2017.

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).
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> "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.)[3]
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> The Bulletin further advises:
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> "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.
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> "If the medical evidence of record is [in]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."[4]

As noted, FECA Bulletin No. 17-06 indicates that in measuring ROM, the evaluator should obtain three independent measurements and use the greatest measurement to determine the extent of impairment.[5] The evidence presently of record fails to establish that Dr. Watkins Campbell properly measured the ROM of appellant's bilateral upper extremities three times prior

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

[4] *Id*.

[5] *Supra* note 3; *see also J.V.*, Docket No. 18-1052 (issued November 8, 2018).

to rating the extent of her permanent impairment. It was therefore incumbent upon the DMA to obtain the necessary ROM measurements to complete the full rating using both the ROM and DBI methodologies and thereafter identify the higher impairment rating for the claims examiner.[6]

The Board therefore finds that because OWCP failed to follow the procedures set forth in FECA Bulletin No. 17-06, the case must be remanded.[7] On remand, OWCP should further develop the medical evidence, including referral to a medical examination to obtain three independent ROM measurements as required under FECA Bulletin No. 17-06. Following this and other such development as deemed necessary, it shall issue a *de novo* decision.[8]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2017 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this order of the Board.

Issued: October 28, 2019
Washington, DC

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

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

Janice B. Askin, Judge

[6] *See M.D.*, Docket No. 18-1703 (issued January 18, 2019) (finding that a DMA should advise as to the medical evidence necessary to complete the ROM method of rating if the medical evidence of record is insufficient to rate appellant's impairment using loss of ROM).

[7] *R.A.*, Docket No. 18-1331 (issued April 24, 2019); *F.V.*, Docket No. 18-0427 (issued November 9, 2018).

[8] *J.F.*, Docket No. 17-1726 (issued March 12, 2018).