

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

S.P., Appellant)	
)	
and)	Docket No. 19-0843
)	Issued: April 16, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Carol Stream, IL, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

On March 11, 2019 appellant filed a timely appeal from two February 6, 2019 decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-0843.

On December 28, 2010 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging an injury to her left arm when she moved an all-purpose container while scanning mail in the performance of duty. By decision dated February 18, 2011, OWCP accepted the claim for temporary aggravation of left shoulder tendinitis and left carpal tunnel syndrome.

The record reflects that appellant also filed a May 28, 2011 occupational disease claim (Form CA-2), which was assigned OWCP File No. xxxxxx498, for right upper extremity injuries arising from factors of her federal employment, including repetitive employment duties. This claim was accepted for right carpal tunnel syndrome and lesion of the right ulnar nerve. OWCP

File No. xxxxxx498 was combined with the current claim, with the latter assigned as the master file.¹

On the date of appellant's December 28, 2010 injury she was working a permanent, limited-job duty. She stopped work on that date and returned to part-time, limited-duty work on April 17, 2012. On July 21, 2012 appellant sustained a recurrence of disability and has remained off work since that date.

In a January 23, 2017 medical report, Dr. Anatoly Rozman, appellant's treating physician Board-certified in physical medicine and rehabilitation, provided a permanent impairment rating pertaining to her bilateral upper extremities. He concluded that appellant had a combined 18 percent bilateral upper extremity permanent impairment.

On February 2, 2017 appellant filed a claim for a schedule award (Form CA-7).

On April 30, 2018 OWCP referred appellant to Dr. James Warmbrod, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding permanent impairment of her upper extremities in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

In his May 24, 2018 report, Dr. Warmbrod calculated two percent permanent impairment of appellant's left shoulder utilizing the range of motion (ROM) methodology under the A.M.A., *Guides*. He reported that he had not obtained a *QuickDASH* score as part of his evaluation. Dr. Warmbrod concluded that appellant sustained five percent permanent impairment for right cubital tunnel syndrome and three percent permanent impairment for right carpal tunnel syndrome. June 20 and July 5, 2018 addendums were provided, which showed Dr. Warmbrod's worksheet calculations for the left and right upper extremity ratings, finding 12 percent permanent impairment of the left shoulder, 2 percent permanent impairment for right cubital tunnel syndrome, and 2 percent permanent impairment for right carpal tunnel syndrome.

On August 15, 2018 Dr. Michael Katz, Board-certified in occupational medicine and serving as an OWCP district medical adviser (DMA), reviewed the medical evidence of record. He determined that appellant sustained 5 percent permanent impairment due to right median nerve entrapment and 5 percent permanent impairment due to right ulnar nerve impairment, for a combined 8 percent permanent impairment of the right upper extremity after the value for the second entrapped nerve was reduced by 50 percent.³ For appellant's left upper extremity, the DMA calculated 16 percent permanent impairment. He explained that he calculated appellant's nerve entrapment impairment ratings utilizing Dr. Rozman's January 23, 2017 report as his

¹ Appellant also had a prior claim, which was accepted for right rotator cuff tear, right shoulder sprain, and neck sprain under OWCP File No. xxxxxx778 and on May 7, 2009 she was awarded seven percent permanent impairment for the right upper extremity.

² A.M.A., *Guides* (6th ed. 2009).

³ The A.M.A., *Guides* specifically indicate that, if multiple simultaneous neuropathies occur in the same limb, both impairments may be rated, and the nerve qualifying for the larger impairment is given the full impairment while the nerve qualifying for the smaller impairment is rated at 50 percent. *Id.* at 448.

examination findings and narrative provided a greater level of detail than that of Dr. Warmbrod's evaluation. The DMA noted that he used Dr. Warmbrod's May 24, 2018 examination findings for the majority of the left shoulder evaluation which provided probative details for a ROM impairment which was not previously present in Dr. Rozman's report. He explained that he combined appellant's current right upper extremity permanent impairment rating with her previous award and then subtracted appellant's prior schedule award to find that she was entitled to an additional net award of seven percent permanent impairment of the right upper extremity. The DMA concluded that appellant reached maximum medical improvement (MMI) on January 23, 2018, the date of Dr. Rozman's examination.⁴

By decision dated February 6, 2019, OWCP granted appellant a schedule award for an additional seven percent permanent impairment of the right upper extremity. It found that the percentage of permanent impairment was based on the medical findings and report of Dr. Warmbrod dated July 12, 2018 and the DMA's report dated August 16, 2018.

In a separate decision dated February 6, 2019, OWCP granted appellant a schedule award for 16 percent permanent impairment of the left upper extremity. It found that the percentage of permanent impairment was based on both the medical findings and report of Dr. Warmbrod dated May 24, 2018 and the report of Dr. Katz dated August 16, 2018.

The Board finds that this case is not in posture.

The Board finds that Dr. Warmbrod failed to provide a complete and thorough examination pertaining to the upper extremities such that his evaluation could be used to determine impairment of the bilateral upper extremities. When discussing impairment for appellant's right carpal tunnel and cubital tunnel syndrome, he specifically noted his failure to obtain a *QuickDASH* score for consideration. In his August 15, 2018 report, the DMA related that Dr. Warmbrod's examination was lacking in detail pertaining to entrapment for the bilateral upper extremities, such that he could utilize his findings to provide a current impairment rating of the upper extremities.⁵ As the medical evidence of record was insufficient for the DMA to render a rating using Dr. Warmbrod's evaluation, he should have advised the claims examiner of the medical evidence necessary to complete the ratings.⁶

It is well established that proceedings under FECA are non-adversarial in nature, and while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁷ Once OWCP undertook development of the evidence by referring appellant to a second opinion physician and a DMA, it had an obligation to

⁴ The Board notes that, while the DMA noted the date of MMI as January 23, 2018, Dr. Rozman's report and evaluation was completed on January 23, 2017.

⁵ *M.L.*, Docket No. 18-0547 (issued November 7, 2018).

⁶ 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 2.808.5 (March 2017); see also *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

⁷ *D.A.*, Docket No. 19-0314 (issued September 18, 2019).

obtain a proper evaluation and report that would resolve the issue in this case.⁸ The Board will, therefore, set aside OWCP's February 6, 2019 schedule award decisions and remand the case for a physician to conduct a full physical examination followed by a proper analysis under the A.M.A., *Guides* in order to determine the extent of appellant's upper extremity impairments, if any.⁹ After such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for an upper extremity schedule award.

IT IS HEREBY ORDERED THAT the February 6, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this order of the Board.

Issued: April 16, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁸ *B.B.*, Docket No. 17-1949 (issued October 16, 2018).

⁹ *Id.*