

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than two percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On March 1, 2013 appellant, then a 47-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral wrist tendinitis as a result of factors of her federal employment including pulling and loading mail on machines. She first became aware of her condition and of its relationship to factors of her federal employment on December 17, 2012. By decision dated April 1, 2013, OWCP accepted the claim for bilateral de Quervain's tenosynovitis. On May 30, 2013 appellant underwent OWCP-approved right wrist release of the first dorsal compartment surgery. She stopped work intermittently and OWCP paid her wage-loss compensation on the supplemental rolls. Appellant was released to full-duty work on September 24, 2014.

On March 30, 2015 appellant filed a claim for a schedule award (Form CA-7).

Following initial development and denial of the schedule award claim⁴ on November 11, 2016 OWCP referred appellant to Dr. Thomas L. Gritzka, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵

In his November 11, 2016 report, Dr. Gritzka utilized the range of motion (ROM) methodology to calculate eight percent permanent impairment of the right upper extremity due to residuals of appellant's de Quervain's disease and surgery.

On February 11, 2017 Dr. Herbert White, Board-certified in occupational medicine serving as an OWCP district medical adviser (DMA), reviewed the medical evidence of record and determined that maximum medical improvement (MMI) was reached on November 11, 2016, the date of Dr. Gritzka's examination. He reported that under the diagnosis-based impairment (DBI) method for de Quervain's sprain/strain, appellant sustained two percent permanent impairment of the right upper extremity.⁶ Dr. White further reported that due to inconsistencies between Dr. Gritzka's examination findings and prior physical examination findings, the ROM methodology was excluded and impairment was rated only using the DBI method.

By decisions dated May 23, 2017, OWCP vacated the December 27, 2016 decision and accepted appellant's claim for a schedule award. It granted two percent permanent impairment of

⁴ By decisions dated February 16 and December 27, 2016, OWCP denied appellant's schedule award claim. On January 27, 2017 appellant, through counsel, requested reconsideration.

⁵ A.M.A., *Guides* (6th ed. 2009).

⁶ *Id.* at 395, Table 15-3.

the right upper extremity. The date of MMI was noted as November 11, 2016 and the period of award ran for 6.24 weeks from November 11 to December 24, 2016.

On June 7, 2017 appellant, through counsel, requested review of the written record before an OWCP hearing representative.

By decision dated October 6, 2017, OWCP's hearing representative set aside the May 23, 2017 decision and remanded the claim for further medical development and application of FECA Bulletin No. 17-06.⁷ The hearing representative instructed OWCP to refer appellant for a second opinion examination and to instruct the specialist to provide an assessment of permanent impairment using both the DBI and ROM rating methods in accordance with FECA Bulletin No. 17-06.

Upon return of the case record, OWCP referred appellant to Dr. James Schwartz, a Board-certified orthopedic surgeon, for a second opinion evaluation and opinion regarding permanent impairment in accordance with FECA Bulletin No. 17-06 and the sixth edition of the A.M.A., *Guides*.

In his February 3, 2018 report, Dr. Schwartz provided his ROM findings pertaining to appellant's right wrist, reporting the average amounts based on "two to three tries" each. He calculated three percent permanent impairment utilizing the ROM methodology, but noted that he believed this impairment should be less than three percent per his evaluation and per appropriate rounding. Utilizing the DBI methodology for de Quervain's wrist sprain, Dr. Schwartz opined that appellant sustained two percent permanent impairment of the right upper extremity. He opined that the DBI methodology should be used.⁸ Dr. Schwartz noted that, if appellant's ROM findings were rounded appropriately, she would have zero percent permanent impairment. He concluded that appellant sustained two percent permanent impairment of the right upper extremity and that she reached MMI on February 3, 2018.

By decision dated February 15, 2018, OWCP denied appellant's claim for an increased schedule award.

On February 23, 2018 appellant, through counsel, requested review of the written record before an OWCP hearing representative.

By decision dated June 5, 2018, OWCP's hearing representative set aside the February 15, 2018 decision and remanded the case for further development. She found that Dr. Schwartz's opinion was not well rationalized and could not carry the weight of the medical evidence. The hearing representative noted that the A.M.A., *Guides* indicate that three independent ROM measurements should be documented, whereas Dr. Schwartz reported the average of two to three tries each. She further reported that there was no indication that the second opinion report had been reviewed by a DMA to determine whether the schedule award was correctly calculated. The hearing representative remanded the case for clarification from Dr. Schwartz and further review by a DMA.

⁷ FECA Bulletin No. 17-06 (May 8, 2017).

⁸ *Supra* note 5.

On remand OWCP requested Dr. Schwartz provide clarification concerning whether three independent ROM measurements were completed as required by the A.M.A., *Guides*. It further requested he provide a well-rationalized explanation as to whether the claimant had a right upper extremity permanent impairment greater than the two percent previously awarded.

In a July 16, 2018 addendum report, Dr. Schwartz reported that during the physical examination, several tries, “essentially greater than three range of motion measurements,” were done for each wrist. He reported that the noted examination findings were the “averages of these measurements.” Dr. Schwartz indicated that, according to the A.M.A., *Guides*, wrist extension of 55 degrees should be rounded and he would round this upwards to 60 degrees. He reported that ROM was an appropriate alternative impairment rating. Dr. Schwartz determined that pursuant to Table 15-32, appellant’s findings fell into the range between grade modifier 0 and 1, and rounding upwards resulted in a zero percent impairment rating of the right upper extremity.⁹ Thus, he found that the DBI method provided the higher impairment rating at two percent permanent impairment and should be used as the method of evaluation.

On July 29, 2018 Dr. White, serving as a DMA, reviewed the medical evidence of record including the reports from Dr. Schwartz. He agreed with Dr. Schwartz’s impairment rating and utilized the DBI methodology to calculate two percent permanent impairment of the right upper extremity. With regard to the ROM methodology, the DMA reported that he was “unable to rate the impairment with the information provided.” He explained that in Dr. Schwartz’s report, the three motions were averaged when the greatest of the three motions should have been used. The DMA explained that the A.M.A., *Guides* provide that, “The maximum observed measurement is used to determine the range of motion impairment.”¹⁰ He went on to calculate impairment utilizing the ROM averages which amounted to zero percent permanent impairment of the right upper extremity. The DMA concluded that appellant was not entitled to a schedule award for more than the two percent permanent impairment previously awarded.

By decision dated August 3, 2018, OWCP denied appellant’s request for an additional schedule award finding that the requirements had not been met to establish a permanent impairment greater than the two percent previously awarded.

Appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative on August 8, 2018. The hearing was held on January 8, 2019.

By decision dated March 22, 2019, OWCP’s hearing representative affirmed the August 3, 2018 decision.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.¹¹ However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and

⁹ *Id.* at 473.

¹⁰ *Id.* at 464.

¹¹ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

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.¹² As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).¹³

In addressing upper extremity impairments, the sixth edition requires identification of the impairment class of diagnosis (CDX) condition, which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).¹⁴ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁵

The A.M.A., *Guides* also provide that ROM impairment methodology is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other DBI sections are applicable.¹⁶ If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.¹⁷ Adjustments for functional history may be made if the evaluator determines that the resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.¹⁸

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology *versus* the ROM methodology for rating of upper extremity impairments.¹⁹ Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

“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).

“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.]

¹² 20 C.F.R. § 10.404; *L.T.*, Docket No. 18-1031 (issued March 5, 2019); *see also* Ronald R. Kraynak, 53 ECAB 130 (2001).

¹³ *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).

¹⁴ A.M.A., *Guides* 383-492.

¹⁵ *Id.* at 411.

¹⁶ *Id.* at 461.

¹⁷ *Id.* at 473.

¹⁸ *Id.* at 474.

¹⁹ FECA Bulletin No. 17-06 (May 8, 2017).

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.)²⁰

The Bulletin further advises:

"If the rating physician provided an assessment using the ROM 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."²¹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.²²

ANALYSIS

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

Upon development of the claim, OWCP referred appellant to Dr. Schwartz for a second opinion examination and opinion regarding permanent impairment of appellant's right wrist. In his February 3, 2018 report, Dr. Schwartz utilized the DBI method and calculated two percent permanent impairment of the right upper extremity.²³ Regarding the ROM methodology, he provided averages based on two to three tries. Dr. Schwartz calculated three percent permanent impairment based on the ROM methodology, but also opined that, if appellant's range of motion was rounded appropriately, she would have zero percent permanent impairment of the right wrist.

Following receipt of the report, OWCP requested Dr. Schwartz provide clarification concerning whether three independent ROM measurements were completed as required by the A.M.A., *Guides*. Rather than providing three independent ROM measurements as required by the A.M.A., *Guides*, Dr. Schwartz only noted the averages of these measurements which he improperly used when determining that appellant had zero percent permanent impairment under the ROM methodology.²⁴

Consistent with its procedures,²⁵ OWCP referred the matter to a DMA for an opinion regarding appellant's permanent impairment in accordance with the A.M.A., *Guides*. Dr. White,

²⁰ A.M.A., *Guides* 477.

²¹ *Supra* note 18; *V.L.*, Docket No. 18-0760 (issued November 13, 2018); *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

²² See Federal (FECA) Procedure Manual, *supra* note 13 at Chapter 2.808.6(f) (March 2017).

²³ *Supra* note 5.

²⁴ A.M.A., *Guides* 464.

²⁵ *Id.*

serving as the DMA, reviewed the reports of Dr. Schwartz and also determined that appellant sustained two percent permanent impairment based on the DBI methodology. With regard to the ROM methodology, the DMA reported that he was unable to rate the impairment with the information provided. The DMA correctly explained that in Dr. Schwartz's report, the three motions were averaged when the greatest of the three motions should have been used.²⁶

The Board finds that as Dr. Schwartz failed to render a proper examination and impairment evaluation as requested, his report, as well as that of the DMA, is insufficient to resolve the issue in this claim.

On remand OWCP should send appellant to a new second opinion physician and further develop the claim to obtain three independent ROM measurements as required under FECA Bulletin No. 17-06.²⁷ After it obtains the evidence necessary to complete the rating as described above, the case should be referred to a DMA to independently calculate impairment to the right upper extremity using both ROM and DBI methods and identify the higher rating.²⁸ Following this and such further development as deemed necessary, OWCP shall issue a *de novo* decision.²⁹

CONCLUSION

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

²⁶ *Id.*

²⁷ *J.S.*, Docket No. 19-0483 (issued October 10, 2019).

²⁸ *See J.V.*, Docket No. 18-1052 (issued November 8, 2018); *M.C.*, Docket No. 18-0526 (issued September 11, 2018).

²⁹ *J.F.*, Docket No. 17-1726 (issued March 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 14, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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