



disorder with myelopathy, lumbar region; and sciatica. It paid appellant wage-loss compensation on the periodic compensation rolls effective January 16, 2011.

On November 6, 2012 appellant filed a claim for a schedule award (Form CA-7). By decision dated April 22, 2014, OWCP granted appellant a schedule award for 47 percent permanent impairment of the left upper extremity. The impairment rating did not include a skin impairment rating.

On August 25, 2014 appellant requested reconsideration. By decision dated November 21, 2014, OWCP denied modification of its April 22, 2014 decision.

On September 14, 2017 appellant filed a claim for an increased schedule award (Form CA-7).

Following initial development of the claim, on June 5, 2018 OWCP referred appellant to Dr. Simon Finger, a Board-certified orthopedic surgeon, for a second opinion examination. In a June 26, 2018 report, Dr. Finger noted appellant's history of injury and that appellant underwent multiple procedures to the left upper extremity, including skin grafts. He provided detailed examination findings and opined, using the diagnosis-based impairment (DBI) method under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> that appellant had a final left upper extremity permanent impairment of 54 percent.<sup>3</sup> This encompassed 47 percent permanent left upper extremity impairment for ulnar nerve impairment above mid forearm and 9 percent upper extremity impairment for radial neuropathy, which Dr. Finger combined to find 54 percent permanent impairment of the left upper extremity. Dr. Finger also noted that, while appellant's skin grafts could be rated, the rating of skin lesions was beyond the scope of his practice. In a July 12, 2018 addendum report, he provided a revised left upper extremity impairment rating of 52 percent, noting that the left upper extremity impairment rating for the radial nerve was 5 percent, not 9 percent as earlier reported.

On September 12, 2018 Dr. Herbert White, Jr., Board-certified in occupational medicine and serving as a district medical adviser (DMA), concurred with Dr. Finger's left upper extremity impairment calculations that the above-midforearm ulnar nerve impairment resulted in 47 percent left upper extremity impairment and that the impairment for elbow with sparing of the triceps resulted in a rating of 5 percent. However, he indicated that the combined values resulted 50 percent total left upper extremity permanent impairment, noting that Dr. Finger had not properly utilize the combined values chart in the A.M.A., *Guides*. The DMA indicated that, since appellant was previously awarded 47 percent left upper extremity impairment, he was entitled to an

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> Dr. Finger advised that, since peripheral nerve impairment rating was applicable, range of motion (ROM) impairment rating was not utilized.

additional 3 percent impairment for 50 percent total left upper extremity permanent impairment. He offered no opinion regarding appellant's entitlement to a schedule award for his skin grafts.

By decision dated September 18, 2018, OWCP granted appellant an increased schedule award for 3 percent impairment to the left upper extremity, for total schedule award of 50 percent permanent impairment of the left upper extremity. The award ran for the period June 26 to August 30, 2018.

The Board notes that 5 U.S.C. § 8107(c)(22) provides that skin has been added to the list of scheduled members for which FECA provides compensation for loss.<sup>4</sup> A schedule award for the skin may be paid for injuries occurring on or after September 11, 2001, for up to 205 weeks of compensation.<sup>5</sup> FECA bulletin and OWCP procedures describe the procedure to be followed in evaluating skin impairment.<sup>6</sup> The impairment rating should relate only to the skin condition and not to other underlying impairments associated with disfigurement or loss of function, since these should be addressed separately and, as described in the A.M.A., *Guides* and OWCP procedures.<sup>7</sup> Section 8.3 of the A.M.A., *Guides* provides instruction as to rating impairment due to scars and skin grafts.<sup>8</sup>

In his June 26, 2018 report, Dr. Finger, OWCP's second opinion examiner, indicated that the rating of appellant's skin lesions was beyond his expertise. It was therefore incumbent upon OWCP to further develop the record and refer appellant to an appropriate specialist to render an impairment to his skin.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.<sup>17</sup> While the claimant has the burden of proof to establish entitlement to schedule award compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>9</sup> As OWCP undertook development of the evidence by referring appellant for a second opinion examination, it had the duty to secure an appropriate impairment rating.<sup>10</sup>

For this reason, the case will be remanded to OWCP for further development on the extent of permanent impairment due to appellant's skin condition.<sup>11</sup> After such development as deemed

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<sup>4</sup> 5 U.S.C. § 8107(c)(22); 20 C.F.R. § 10.404 (2011); *see also* FECA Bulletin No. 11-07 (issued August 10, 2011).

<sup>5</sup> *See id.*

<sup>6</sup> FECA Bulletin 11-07, *id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(c)(4) (March 2017).

<sup>7</sup> FECA Bulletin 11-07, *supra* note 4.

<sup>8</sup> *Supra* note 2 at 162-63.

<sup>9</sup> *See M.L.*, Docket No. 18-0547 (issued November 7, 2018).

<sup>10</sup> *D.M.*, Docket No. 17-1832 (issued March 14, 2018); *Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>11</sup> *A.B.*, Docket No. 13-1487 (issued July 29, 2014).

necessary, OWCP should issue an appropriate decision on the extent of his permanent impairment to his left upper extremity based on his accepted conditions.<sup>12</sup>

**IT IS HEREBY ORDERED THAT** the September 18, 2018 Office of Workers' Compensation Programs' decision is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: March 20, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> On appeal appellant questions the selection of the date of maximum medical improvement. The period covered by a schedule award commences on the date that the employee reaches MMI from the residuals of the injury. The question of when MMI has been reached is a factual one that depends upon the medical findings in the record. The determination of such date is to be made in each case upon the basis of the medical evidence in that case. The date of MMI is usually considered to be the date of the medical examination that determined the extent of the impairment. *C.R.*, Docket No. 17-1872 (issued March 8, 2018); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (January 2010).