

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

R.R., Appellant	)	
	)	
and	)	Docket No. 19-1933
	)	Issued: March 19, 2021
DEPARTMENT OF HOMELAND SECURITY,	)	
TRANSPORTATION SECURITY	)	
ADMINISTRATION, Raleigh, NC, 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  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On September 18, 2019 appellant filed a timely appeal from a March 29, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1933.

On November 13, 2011 appellant, then a 41-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that he sustained injuries to his right wrist, arm, and shoulder and left wrist and arm due to factors of his federal employment, including the repetitive use of his hands. By decision dated January 3, 2012, OWCP accepted the claim for bilateral carpal tunnel syndrome (CTS).

On April 23, 2012 appellant underwent authorized right carpal tunnel release surgery.

In an evaluation for permanent impairment rating dated November 28, 2012, Dr. Harrison G. Tuttle, a Board-certified orthopedic hand surgeon and appellant's treating physician, indicated that she had reached maximum medical improvement (MMI) and opined that she had six percent permanent impairment of her right hand and eight percent permanent

impairment of her left hand, using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>1</sup>.

On December 21, 2012 appellant filed a claim for a schedule award (Form CA-7).

On February 5, 2013 OWCP's district medical adviser (DMA) indicated that appellant had reached MMI on November 28, 2012, the date of Dr. Tuttle's impairment rating. The DMA opined that appellant had two percent permanent impairment of her right upper extremity and zero percent permanent impairment of the left upper extremity.

By decision dated March 15, 2013, OWCP granted appellant a schedule award for two percent permanent impairment of the right upper extremity and zero percent permanent impairment of the left upper extremity.

Appellant subsequently underwent authorized left carpal tunnel release surgery on March 26, 2015.

On July 7, 2017 Dr. Tuttle provided an additional evaluation for permanent impairment where he found that appellant had reached MMI and opined that she had a permanent impairment rating of 10 percent in each upper extremity.

On January 11, 2018 appellant filed a Form CA-7 for an increased schedule award.

In a February 10, 2018 report, Dr. David J. Slutsky, a Board-certified orthopedic hand surgeon serving as an OWCP district medical adviser (DMA), found that appellant had reached MMI on July 7, 2017, the date of Dr. Tuttle's impairment rating. He disagreed with Dr. Tuttle's rating noting that Dr. Tuttle did not provide an explanation or calculations to support his findings. Dr. Slutsky opined that appellant had two percent permanent impairment of the right upper extremity and zero percent permanent impairment of the left upper extremity.

OWCP subsequently referred appellant to Dr. Chason S. Hayes, a Board-certified orthopedic surgeon, for a second opinion examination. In his January 4, 2019 report, Dr. Hayes diagnosed status-post bilateral carpal tunnel release and indicated that his impairment rating was calculated by using the compression neuropathy impairment for CTS on Table 15-23, page 449, of the A.M.A., *Guides*. He concluded that appellant had two percent permanent impairment of the right upper extremity and two percent permanent impairment of the left upper extremity.

On February 26, 2019 Dr. Slutsky reviewed Dr. Hayes' January 4, 2019 report and found that he had assigned a grade modifier for functional history (GMFH) of 3 apparently based on constant symptoms, but noted that there was no documentation of paresthesias or numbness involving the fingers and if appellant had constant symptoms there should have been physical findings of thenar atrophy and EMG evidence of axon loss, which was not present. He, however, concurred with Dr. Hayes' overall impairment rating of two percent for the right upper extremity. With regard to appellant's left CTS, Dr. Slutsky found that Dr. Hayes had assigned a grade modifier for clinical studies (GMCS) of 1 but the electrodiagnostic studies that had been performed

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<sup>1</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

on December 5, 2011 were incomplete, with no distal median motor latencies documented. He indicated that the distal median sensory latencies were considered to be within the nonratable range. Dr. Slutsky further indicated that according to page 445 of the A.M.A., *Guides*, the diagnosis of a focal neuropathy syndrome must be documented by sensory and motor nerve conduction studies and/or needle EMG as stated in appendix 15-B in order to be ratable as impairment. If a nerve conduction velocity test was not performed or did not meet this section's diagnostic criteria, there was no permanent impairment from the section. Dr. Slutsky concluded, therefore, that appellant had no permanent impairment of the left upper extremity.

By decision dated March 29, 2019, OWCP denied appellant's claim for an increased schedule award, finding that the medical evidence of record did not demonstrate additional permanent impairment of the right upper extremity and no measurable impairment of the left upper extremity.

The Board having duly considered the matter, finds that this case is not in posture for decision.

The Board has previously found that OWCP had inconsistently applied Chapter 15 of the sixth edition of the A.M.A., *Guides* when granting schedule awards for upper extremity claims. No consistent interpretation had been followed regarding the proper use of the DBI or the ROM methodology when assessing the extent of permanent impairment for schedule award purposes.<sup>2</sup> The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.<sup>3</sup> In *T.H.*, the Board concluded that OWCP physicians were at odds over the proper methodology for rating upper extremity impairment, having observed attending physicians, evaluating physicians, second opinion physicians, impartial medical examiners, and DMAs use both DBI and ROM methodologies interchangeably without any consistent basis. Furthermore, the Board observed that physicians interchangeably cited to language in the first printing or the second printing when justifying use of either ROM or DBI methodology. Because OWCP's own physicians were inconsistent in the application of the A.M.A., *Guides*, the Board found that OWCP could no longer ensure consistent results and equal justice under the law for all claimants.<sup>4</sup>

This case will therefore be remanded for application of OWCP's procedures found in FECA Bulletin No. 17-06. After such further development of the evidence as necessary, OWCP shall issue a *de novo* decision on appellant's claim for an upper extremity schedule award.<sup>5</sup> Accordingly,

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<sup>2</sup> *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

<sup>3</sup> *A.B.*, Docket No. 16-0706 (issued February 15, 2018); *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

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

<sup>5</sup> See FECA Bulletin No. 17-06 (issued May 8, 2017). See also *P.T.* Docket No. 18-0968 (issued October 23, 2018), *A.S.*, Docket No. 19-0025 (issued September 3, 2019); *D.D.*, Docket No. 16-0558 (issued August 5, 2016).

**IT IS HEREBY ORDERED THAT** the March 29, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 19, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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