

On January 11, 2019 appellant filed an appeal to the Board.

On January 14, 2019 appellant underwent OWCP-approved cervical procedures at C5-6 and C6-7 including arthrodesis, complete anterior cervical discectomy, anterior segmental spinal instrumentation with insertion with spinal fixation, application of intervertebral biomechanical devices, and application of bone autograft.

On June 17, 2019 appellant filed a claim for a schedule award (Form CA-7).

In a report dated July 2, 2019, Dr. Angelo Alves, a Board-certified neurologist, opined that appellant had reached MMI and that he had permanent impairment of 10 percent for residual cervical injury with a residual problem in the left upper extremity, status post cervical spine surgery, 20 percent for chronic low back pain syndrome with disc herniations and signs of radiculopathy, and 5 percent for bilateral carpal tunnel syndrome CTS. In a letter dated April 29, 2019, he advised that appellant suffered from significant bilateral CTS, associated with sorting mail on a daily basis, and recommended that he reduce his activity to a minimum acceptable level.

By decision dated August 8, 2019, the Board affirmed OWCP's January 8, 2019 decision, finding that, as appellant had not established that he was at MMI, he had not met his burden of proof to establish permanent impairment of a scheduled member of function of the body, warranting a schedule award.

In a statement of accepted facts (SOAF) dated October 7, 2019, OWCP noted that on January 11, 2019 appellant filed an occupational disease claim (Form CA-2) for carpal tunnel syndrome.² It also noted that he had filed a notice of recurrence (Form CA-2a) due to a cervical pinched nerve.³

OWCP referred appellant to Dr. William Dinenberg, a Board-certified orthopedic surgeon, for a second opinion regarding appellant's entitlement to a schedule award. In a report dated March 27, 2020, Dr. Dinenberg, diagnosed cervical and lumbar sprain, left foot sprain, and cervical and lumbar disc bulges. He noted that he would need to obtain a new electromyogram/nerve conduction velocity (EMG/NCV) study to render an impairment rating. In a supplemental report dated June 4, 2020, Dr. Dinenberg opined that no impairment rating was appropriate for the bilateral lower extremities, but that based on chronic left C7 radiculopathy with mild sensory deficit and minimal loss of strength, he rendered 10 percent upper extremity impairment secondary to C7 under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁴ and *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009) (*The Guides Newsletter*). Dr. Dinenberg's report was referred to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), who determined in a report dated June 25, 2020 that as Dr. Dinenberg found no objective motor/sensory deficits in the right upper extremity,

² Appellant has a claim under OWCP File No. xxxxxx959 accepted for bilateral carpal tunnel syndrome. OWCP File No. xxxxxx959 has not been administratively combined with the present claim.

³ Appellant's Form CA-2a was converted to a new occupational disease claim, assigned OWCP File No. xxxxxx617. OWCP No. xxxxxx617 has not been administratively combined with the present claim.

⁴ A.M.A., *Guides* (6th ed. 2009).

left lower extremity, or right lower extremity, there was no ratable impairment of any spinal nerve and no ratable impairments for the accepted spinal conditions.

By decision dated July 30, 2020, OWCP denied appellant's claim for a schedule award for the right upper extremity and the bilateral lower extremities. It based its decision on the March 27 and June 4, 2020 reports of Dr. Dinenberg.⁵

The Board, having duly considered the matter, finds that this case is not in posture for decision. OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body.⁶ For a full and fair adjudication of appellant's schedule award claim, the case shall be remanded for OWCP to administratively combine OWCP File No. xxxxxx925 with OWCP File Nos. xxxxxx959 and xxxxxx617. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* merit decision on appellant's schedule award claim for the right upper extremity and bilateral lower extremities.

IT IS HEREBY ORDERED THAT the July 30, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: March 29, 2021
Washington, DC

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

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

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

⁵ OWCP noted that the impairment of the appellant's left upper extremity would be addressed in a separate decision.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).