

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

N.M., Appellant	)	
	)	
and	)	<b>Docket No. 20-1046</b>
	)	<b>Issued: February 8, 2022</b>
U.S. POSTAL SERVICE, CEDAR RAPIDS	)	
PROCESSING & DISTRIBUTION CENTER,	)	
Cedar Rapids, IA, Employer	)	
	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On April 17, 2020 appellant filed a timely appeal from a December 27, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1046.

On October 10, 2017 appellant, then a 51-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2017 he strained his left shoulder when working with faulty operating equipment while in the performance of duty. OWCP accepted the claim for strain of unspecified muscle, fascia and tendon of the left shoulder and upper arm, and sprain of left rotator cuff capsule. Appellant underwent an OWCP-authorized left rotator cuff tear repair surgery on March 7, 2018. He returned to limited-duty work on September 5, 2018 and began working a permanent modified-duty job on November 20, 2018.

On October 15, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award. As OWCP did not receive an impairment report from appellant's treating physician, on February 20, 2019 OWCP arranged a second opinion evaluation with Dr. Stanley J. Mathew, a Board-certified physiatrist, to determine whether appellant was eligible for a schedule award. The February 20, 2019 statement of accepted facts (SOAF) did not list any prior work-related claims or injuries to the left shoulder.

In a March 15, 2019 report, Dr. Matthew noted the history of injury in October 2017 when appellant pulled open a steel cage and hurt his left shoulder. He opined under Table 15-5 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>1</sup> that appellant had 13 percent permanent impairment as a result of the October 9, 2017 employment injury. Impairment ratings under both the diagnosis-based impairment (DBI) and range of motion (ROM) impairment methodologies were provided.

In an April 25, 2019 report, Dr. Jovito Estaris, Board-certified in occupational medicine serving as a district medical adviser (DMA), explained in great detail why Dr. Matthew's impairment rating was problematic under both the DBI and ROM impairment methodologies.

On August 12, 2019 OWCP provided supplemental questions to its DMA, Dr. Estaris. It noted, "Since our last DMA referral on April 15, 2019 it was determined that the [appellant] had received a prior [one] percent left shoulder impairment on March 14, 1999 ... under case [OWCP] [F]ile [No.] xxxxxxx865." An August 15, 2001 SOAF, a copy of a November 18, 1999 surgical report for arthroscopic repair of superior labrum tear, left shoulder, and November 12, 2001 report from a prior DMA, Dr. David D. Zimmerman, a Board-certified internist, were provided.

In an August 23, 2019 supplemental report, the DMA, Dr. Estaris, opined that appellant had seven percent total permanent impairment of his left upper extremity under the DBI methodology. This was comprised of one percent impairment previously awarded for the left upper extremity under OWCP File No. xxxxxxx865 and an additional six percent permanent impairment of the left upper extremity under the current File No. xxxxxx232.

On September 5, 2019 OWCP expanded the acceptance of the claim to include the additional condition of left rotator cuff tear.

By decision dated September 10, 2019, OWCP awarded appellant six percent permanent impairment for the left upper extremity in addition to the one percent permanent impairment previously awarded under OWCP File No. xxxxxxx865.

On November 8, 2019 appellant requested reconsideration. In support of his request, he submitted an October 3, 2019 report from Dr. David P. Hart, a Board-certified orthopedic surgeon. Dr. Hart opined that appellant had 12 percent permanent impairment of his left upper extremity under the A.M.A., *Guides*.

On December 5, 2019 OWCP provided Dr. Mathew with a copy of the DMA's report to address and clarify the discrepancies noted by the DMA with regard to his opinion of 13 percent permanent impairment of appellant's left upper extremity. On December 15, 2019 Dr. Mathew indicated that he reviewed the DMA's impairment rating and agreed with his impairment rating and recommendations.

By decision dated December 27, 2019, OWCP denied modification of its September 10, 2019 decision.

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

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.<sup>2</sup> For a full and fair adjudication of appellant's schedule award claim, the case shall be remanded for OWCP to administratively combine the current OWCP File No. xxxxxx232 with OWCP File No. xxxxxx865.

The Board additionally notes that, following the development of the schedule award claim, OWCP accepted an additional condition of left rotator cuff tear, which would need to be included in a new SOAF and considered in an impairment rating.<sup>3</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim for the left upper extremity.

**IT IS HEREBY ORDERED THAT** the December 27, 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: February 8, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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

<sup>3</sup> *See D.P.*, Docket No. 19-1514 (issued October 21, 2020).