



## ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of bilateral upper extremities, warranting a schedule award.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On November 14, 1985 appellant, then a 28-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging bilateral wrist injuries. OWCP accepted the claim for de Quervain's tenosynovitis of the right wrist and right radial tenosynovitis. It subsequently expanded the acceptance of appellant's claim to include bilateral carpal tunnel syndrome.<sup>4</sup>

Under OWCP File No. xxxxxx862, on June 20, 2008 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On June 25, 2008 OWCP requested that she submit a permanent impairment evaluation from her physician addressing the extent of any employment-related permanent impairment using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) then in effect.

Appellant provided a July 14, 2008 impairment evaluation by Dr. Samuel J. Chmell, an attending Board-certified orthopedic surgeon, utilizing the fifth edition of the A.M.A., *Guides*.<sup>5</sup>

Following development of the medical evidence, OWCP denied the claim, by decisions dated August 14, 2014 and April 17, 2015, based on the opinion of Dr. Jaroslaw Dzwinyk, a Board-certified orthopedic surgeon and impartial medical examiner, who found no permanent impairment of either upper extremity in his March 26, 2012 and April 8, 2014 reports.

---

<sup>3</sup> *Order Remanding Case*, Docket No. 20-0838 (issued February 24, 2021); Docket No. 17-1800 (issued May 25, 2018); Docket No. 15-1286 (issued December 14, 2015); Docket No. 10-2126 (issued July 5, 2011).

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx055. Under OWCP File No. xxxxxx273, on September 11, 1978, appellant filed a traumatic injury claim (Form CA-1) alleging that she had sustained a right shoulder injury on September 8, 1978 when she fell out of a chair while she was performing her federal employment duties. OWCP accepted that claim for contusion of the right shoulder and upper arm, contusion of the face, scalp, neck, and headache. Under OWCP File No. xxxxxx862, appellant filed an occupational disease claim (Form CA-2) on August 23, 2005 alleging that she sustained a right rotator cuff tear, herniated cervical disc with degenerative disc disease, and degenerative lumbar disease. OWCP accepted this claim for herniated cervical disc at C5-6, right rotator cuff tear, and lumbar strain. It subsequently expanded acceptance of appellant's claim to include bilateral aggravation of osteoarthritis of the hips. Appellant's claims have been administratively combined by OWCP with the present claim, OWCP File No. xxxxxx055, serving as the master file.

<sup>5</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

Appellant then appealed to the Board. By decision dated December 14, 2015,<sup>6</sup> the Board affirmed OWCP's April 17, 2015 decision.

On December 6, 2016 appellant requested reconsideration, contending that OWCP did not consider neurologic impairment to her upper extremities originating in the spine.

By decision dated February 27, 2017, OWCP denied modification of its prior decision. Appellant again appealed to the Board.

During the pendency of the appeal, OWCP received additional medical reports from Dr. Chmell dated March 11, 2017 through March 22, 2018, opining that the accepted bilateral carpal tunnel syndrome and right radial tenosynovitis remained active and disabling. In his March 22, 2018 report, Dr. Chmell noted that she complained of cervical radiculopathy with radiation into both upper extremities.

By decision dated May 25, 2018,<sup>7</sup> the Board affirmed OWCP's February 27, 2017 decision, as Dr. Chmell had not provided an updated impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.<sup>8</sup>

On May 17, 2019 appellant requested reconsideration. She contended that the medical evidence of record established her entitlement to a schedule award for upper extremity impairment due to a complete right rotator cuff tear and herniated cervical disc accepted under OWCP File No. xxxxxx862, bilateral carpal tunnel syndrome and right radial styloid tenosynovitis accepted under OWCP File No. xxxxxx055. Appellant alleged that OWCP had not considered all of the accepted conditions that Dr. Dzwinyk ignored imaging and electrodiagnostic studies in his March 26, 2012 report, and that the Board did not consider her argument regarding the evaluation of cervical radiculopathy under the A.M.A., *Guides* in its May 1, 2018 decision.

In reports dated March 21, 2019, Dr. Chmell noted continued pain, paresthesias, and weakness in both hands. In a letter dated April 4, 2019, he contended that OWCP had not requested nor authorized an impairment rating regarding appellant's accepted bilateral carpal tunnel syndrome.

By decision dated September 4, 2019, OWCP denied appellant's request for reconsideration as Dr. Chmell's March 21 and April 4, 2019 reports were insufficient to warrant a review of the merits of the claim. Appellant subsequently appealed to the Board.

During the pendency of the appeal, OWCP received additional medical reports by Dr. Chmell. In an April 29, 2020 report, Dr. Chmell opined that appellant remained totally disabled for work due to her accepted bilateral carpal tunnel syndrome, radial styloid tenosynovitis,

---

<sup>6</sup> Docket No. 15-1286 (issued December 14, 2015).

<sup>7</sup> Docket No. 17-1800 (issued May 25, 2018).

<sup>8</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

cervical disc displacement, thoracic disc displacement, lumbar disc displacement, right rotator cuff rupture.

In a May 7, 2020 report, Dr. Chmell opined that appellant remained totally disabled from work due to bilateral carpal tunnel syndrome and right radial styloid tenosynovitis accepted under the present claim, OWCP File No. xxxxxx055.

In a report dated May 15, 2020, Dr. Chmell noted findings of muscle spasm, tenderness, and limited motion throughout the spine, effusion and tenderness of both knees, and diminished strength and sensation in all extremities. He opined that bilateral carpal tunnel syndrome, radial styloid tenosynovitis, and de Quervain's tenosynovitis accepted under the present claim, and additional conditions accepted under OWCP File Nos. xxxxxx089 and xxxxxx862, totally and permanently disabled appellant from gainful employment.

In a July 21, 2020 report, Dr. Chmell opined that appellant continued to be totally disabled from work due to her accepted conditions.

By order dated February 24, 2021,<sup>9</sup> the Board set aside the September 4, 2019 OWCP decision and remanded the case to OWCP for consideration of Dr. Chmell's reports dated March 11, 2017 through March 22, 2018, to be followed by issuance of a *de novo* decision.

By decision dated March 25, 2021, OWCP denied modification, finding that Dr. Chmell's reports were irrelevant to the schedule award issue as he had not provided an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.

### **LEGAL PRECEDENT**

The schedule award provisions 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.<sup>10</sup> However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and 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.<sup>11</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>12</sup> The Board has approved the

---

<sup>9</sup> *Order Remanding Case*, Docket No. 20-0838 (issued February 24, 2021).

<sup>10</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>11</sup> *Id.* at § 10.404. *See also* Ronald R. Kraynak, 53 ECAB 130 (2001).

<sup>12</sup> *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010). *Id.* at Chapter 2.808.5a (March 2017).

use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.<sup>13</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her bilateral upper extremities, warranting a schedule award.

On June 20, 2008 appellant filed a claim for a schedule award. On June 25, 2008 OWCP requested that appellant submit a permanent impairment evaluation from her physician addressing the extent of any employment-related permanent impairment using the fifth edition of the A.M.A., *Guides*. While Dr. Chmell provided a July 14, 2008 evaluation of the bilateral upper extremities utilizing the fifth edition of the A.M.A., *Guides*, he has not provided an updated evaluation utilizing the sixth edition of the A.M.A., *Guides*, as requested.

As noted above, appellant must submit an evaluation from a physician that includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>15</sup> As the medical evidence of record is insufficient to establish permanent impairment of her bilateral upper extremities due to her accepted conditions, the Board finds that appellant has not met her burden of proof.<sup>16</sup>

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her bilateral upper extremities, warranting a schedule award.

---

<sup>13</sup> *J.C.*, Docket No. 20-1071 (issued January 4, 2021); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>14</sup> *Supra* note 12 at Chapter 2.808.6(f) (March 2017).

<sup>15</sup> *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *see D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

<sup>16</sup> *J.P.*, *id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 25, 2021 is affirmed.

Issued: June 6, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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