United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 22-0032**
	)	**Issued: November 7, 2022**
U.S. POSTAL SERVICE, DALLAS PROCESSING & DISTRIBUTION CENTER, Dallas, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 4, 2021 appellant filed a timely appeal from a September 10, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 23 percent permanent impairment of the left upper extremity and greater than 22 percent permanent

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the October 4, 2021 decision, appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

impairment of the right upper extremity for which she was previously granted schedule award compensation.

FACTUAL HISTORY

On August 16, 2000 appellant, then a 42-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2000 she sustained injury to her right shoulder and right arm when she removed mail from a container while in the performance of duty. She stopped work on August 17, 2000. OWCP assigned OWCP File No. xxxxxx277 and accepted appellant's claim for lumbar strain, neck sprain, right shoulder strain, bilateral carpal tunnel syndrome, bilateral wrist sprain, right trigger finger, osteoarthritis of the upper arm, localized primary osteoarthritis of the left lower leg, displacement of lumbar intervertebral disc without myelopathy, and thoracic or lumbosacral neuritis/radiculitis.[3]

By decision dated November 13, 2001, issued under OWCP File No. xxxxxx227, OWCP granted appellant a schedule award for 13 percent permanent impairment of the right upper extremity.

By decision dated February 3, 2003, issued under OWCP File No. xxxxxx475, OWCP granted appellant a schedule award for 8 percent permanent impairment of the left upper extremity and 18 percent permanent impairment of the right upper extremity. By decision dated June 10, 2005, also issued under OWCP File No. xxxxxx475, it determined that appellant received an overpayment of compensation created by her receipt of a duplicate payment of schedule award compensation. OWCP found that a portion of the total schedule award compensation appellant received in connection with its February 3, 2003 decision, amounting to compensation for 13 percent permanent impairment of the right upper extremity, constituted an overpayment because appellant had already received this amount in connection with its November 13, 2001 decision.[4]

By decision dated February 11, 2008, issued under OWCP File No. xxxxxx227, OWCP granted appellant a schedule award for 15 percent permanent impairment of the left upper extremity and 4 percent permanent impairment of the right upper extremity.[5]

Under OWCP File No. xxxxxx227, on July 28, 2020 appellant filed a claim for compensation (Form CA-7) for an increased schedule award.

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[3] OWCP accepted other employment injuries under separate claims: bilateral carpal tunnel syndrome under OWCP File No. xxxxxx475; right knee/leg sprain, right knee contusion, right medial meniscus tear, and osteoarthrosis of the right lower leg under OWCP File No. xxxxxx732; and other affections of the right shoulder region, neck sprain, and brachial neuritis or radiculitis under OWCP File No. xxxxxx059. OWCP administratively combined OWCP File Nos. xxxxxx475, xxxxxx732, xxxxxx059, and xxxxxx227, designating the latter as the master file.

[4] OWCP found that, in connection with its February 3, 2003 decision, appellant should have only received schedule award compensation for an additional 5 percent permanent impairment of the right upper extremity, rather than for 18 percent permanent impairment of that extremity.

[5] In the same decision of February 11, 2008, OWCP also granted appellant schedule award compensation for 17 percent permanent impairment of the left lower extremity and 14 percent permanent impairment of the right lower extremity. The Board notes that appellant's lower extremity impairments are not the subject of the present appeal.

On January 26, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF) for a second opinion examination and impairment rating evaluation with Dr. Vinod K. Panchbhavi, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding her bilateral upper extremity permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[6]

In a March 10, 2021 report, Dr. Panchbhavi discussed appellant's factual and medical history and reported the findings of his physical examination. He noted that she had tenderness to palpation along her cervical spine and decreased range of motion (ROM) of the cervical spine and wrists. For wrist motion, Dr. Panchbhavi recorded three measurements for each type of ROM, *i.e.*, flexion, extension, ulnar deviation, and radial deviation. He determined that appellant had reached maximum medical improvement (MMI) by March 10, 2021, the date of his examination. Dr. Panchbhavi discussed his impairment rating and concluded that she had 7 percent permanent impairment of the left upper extremity and 12 percent permanent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. For the left upper extremity, he utilized Table 15-32 on page 473 and Tables 15-35 and 15-36 on page 477 to determine that appellant had five percent permanent impairment due to limited ROM of the left wrist. Dr. Panchbhavi utilized Table 15-23 on page 449 to determine that she had two percent permanent impairment due to entrapment/compression neuropathy of the left median nerve and he then added the five and two percent impairment values to equal seven percent permanent impairment of the left upper extremity. For the right upper extremity, he utilized Table 15-32, Table 15-35, and Table 15-36 to determine that appellant had 10 percent permanent impairment due to limited ROM of the right wrist. Dr. Panchbhavi utilized Table 15-23 to determine that she had 2 percent permanent impairment due to entrapment/compression neuropathy of the right median nerve and he then added the 10 and 2 percent impairment values to equal 12 percent permanent impairment of the right upper extremity. He explained that his method of rating produced a higher impairment rating for each upper extremity than would be calculated under the diagnosis-based impairment (DBI) method.

OWCP referred appellant's case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon and OWCP district medical adviser (DMA). It requested that he review Dr. Panchbhavi's findings and provide a permanent impairment rating for her upper extremities. In April 18 and August 31, 2021 reports, Dr. Katz advised that he agreed with Dr. Panchbhavi that appellant had 7 percent permanent impairment of her left upper extremity and 12 percent permanent impairment of her right upper extremity under the sixth edition of the A.M.A., *Guides*. He provided impairment calculations that mirrored those of Dr. Panchbhavi.

By decision dated September 10, 2021, OWCP determined that appellant failed to meet her burden of proof to establish greater than 23 percent permanent impairment of the left upper extremity and greater than 35 percent permanent impairment of the right upper extremity for which she previously received schedule award compensation. In reaching this determination, it relied on the impairment ratings of Dr. Panchbhavi and Dr. Katz.

[6] A.M.A., *Guides* (6th ed. 2009).

LEGAL PRECEDENT

The schedule award provisions of FECA,[7] and its implementing federal regulation,[8] 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.[9] The Board has approved the 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.[10]

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability, and Health (ICF): A Contemporary Model of Disablement*.[11] Under the sixth edition, the evaluator identifies class of diagnosis (CDX), which is then adjusted by a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPH), and a grade modifier for clinical studies (GMCS).[12] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[14]

FECA Bulletin No. 17-06 provides guidance in applying ROM or DBI methodologies in rating permanent impairment of the upper extremities. Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

> "As the [A.M.A.,] *Guides* caution that if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id*., at Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] *M.W.*, Docket No. 20-0252 (issued May 24, 2021); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[11] A.M.A, *Guides* (6th ed. 2009) 3, section 1.3.

[12] *Id*. at 383-492.

[13] *Id*. at 411.

[14] *M.W.*, *supra* note 10; *R.R.*, Docket No. 17-1947 (issued December 19, 2019); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

determination of impairment, the CE [claims examiner] should provide this information (*via* the updated instructions noted above) to the rating physician(s)."

"Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify (1) the methodology used by the rating physician (*i.e.*, DBI or ROM); and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A.,] Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used*." (Emphasis in the original.)[15]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[16]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 23 percent permanent impairment of her left upper extremity and greater than 22 percent permanent impairment of her right upper extremity, for which she was previously granted schedule award compensation.

Preliminarily, the Board notes that OWCP indicated in its September 10, 2021 decision that, up to that point, appellant was entitled to and received schedule award compensation for 35 percent permanent impairment of the right upper extremity. However, a review of the case record demonstrates that appellant had only been entitled to and was properly granted schedule award compensation for 22 percent permanent impairment of that extremity.[17]

In a March 10, 2021 report, utilizing the ROM methodology, Dr. Panchbhavi properly determined that appellant had 7 percent permanent impairment of the left upper extremity and 12 percent permanent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. For the left upper extremity, he utilized Tables 15-32, 15-35, and 15-36 to determine that she had five percent permanent impairment due to limited ROM of the left wrist.[18] Dr. Panchbhavi utilized Table 15-23 to determine that appellant had two percent permanent impairment due to entrapment/compression neuropathy of the left median nerve and he then added the five and two percent impairment values to equal seven percent permanent impairment of the left upper

[15] FECA Bulletin No. 17-06 (issued May 8, 2017).

[16] *See supra* note 9 at Chapter 2.808.6(f) (March 2017).

[17] OWCP determined in a June 10, 2005 overpayment decision that appellant had received schedule award compensation for 13 percent permanent impairment of the right upper extremity to which she was not entitled. The Board further notes that OWCP properly indicated in its September 10, 2021 decision that, up to that point, appellant had received schedule award compensation for 25 percent permanent impairment of her left upper extremity.

[18] A.M.A., *Guides* 473, Table 15-32; 477, Table 15-35; 477, Table 15-36.

extremity.[19] For the right upper extremity, he utilized Tables 15-32, 15-35, and 15-36 to determine that she had 10 percent permanent impairment due to limited ROM of the right wrist. Dr. Panchbhavi utilized Table 15-23 to determine that appellant had two percent permanent impairment due to entrapment/compression neuropathy of the right median nerve and he then added the 10 and 2 percent impairment values to equal 12 percent permanent impairment of the right upper extremity. He explained that his method of rating produced a higher impairment rating for each upper extremity than would be calculated under the DBI method.

In April 18 and August 31, 2021 reports, Dr. Katz advised that he agreed with Dr. Panchbhavi that appellant had 7 percent permanent impairment of the left upper extremity and 12 percent permanent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. He provided proper impairment calculations that mirrored those of Dr. Panchbhavi.

Appellant has not submitted medical evidence showing that she has greater than 23 percent permanent impairment of her left upper extremity or greater than 22 percent permanent impairment of the right upper extremity. Therefore, OWCP properly denied her claim for increased schedule award compensation. OWCP's September 10, 2021 decision shall be affirmed as modified to reflect that appellant was previously entitled to and granted schedule award compensation for 22 percent permanent impairment of the right upper extremity.

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 permanent impairment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than 23 percent permanent impairment of the left upper extremity and greater than 22 percent permanent impairment of the right upper extremity for which she was previously granted schedule award compensation.

[19] *Id*. at 449, Table 15-23.

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2021 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: November 7, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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