United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 22-0924**
	)	**Issued: April 27, 2023**
U.S. POSTAL SERVICE, CHANUTE POST OFFICE, Chanute, KS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 12, 2022 appellant filed a timely appeal from a March 30, 2022 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]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the April 12, 2022 decision, appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedures* 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 24 percent permanent impairment of his left upper extremity and 27 percent permanent impairment of his right upper extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On November 14, 2016 appellant, then a 50-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a bilateral shoulder condition due to factors of his federal employment, including repetitive reaching and lifting over the course of 23 years. He noted that he first became aware of his claimed condition on October 1, 2016 and its relation to his federal employment on November 1, 2016. Appellant stopped work on October 19, 2016. OWCP accepted the claim for permanent aggravation of bilateral acromioclavicular joint degeneration and permanent aggravation of bilateral rotator cuff tendinitis.[4]

Appellant submitted a June 30, 2020 report from Dr. John W. Ellis, an osteopath and Board-certified family medicine specialist, who reported examination findings and indicated that he was providing permanent impairment ratings under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[5] Dr. Ellis applied the diagnosis-based impairment (DBI) rating method and found, using Table 15-5 beginning on page 401 and *The Guides Newsletter*, *Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009), that appellant had 29 percent permanent impairment of the right upper extremity and 27 percent permanent impairment of the left upper extremity. He then applied the range of motion (ROM) rating method and found, using Table 15-33 and Table 15-34, pages 474 and 475, that appellant had 40 percent permanent impairment of the right upper extremity and 30 percent permanent impairment of the left upper extremity due to

[3] Docket No. 18-1702 (issued October 4, 2019). *Order Remanding Case*, Docket No. 21-0864 (issued January 31, 2022).

[4] OWCP assigned the claim OWCP File No. xxxxxx730. Appellant had prior claims for which OWCP accepted several upper extremity conditions. In an occupational disease claim, assigned OWCP File No. xxxxxx167, OWCP accepted on July 27, 2005 that he sustained bilateral carpal tunnel syndrome. On May 1, 2007 it awarded appellant a schedule award for two percent permanent impairment of the left upper extremity and four percent permanent impairment of the right upper extremity. In another occupational disease claim, assigned OWCP File No. xxxxxx020, OWCP accepted the claim on July 25, 2014 for bilateral cubital tunnel syndrome and bilateral lateral epicondylitis. On May 7, 2019 it awarded appellant additional schedule award compensation for 8 percent permanent impairment of the left upper extremity and 11 percent permanent impairment of the right upper extremity. In another occupational disease claim, assigned OWCP File No. xxxxxx833, OWCP accepted the claim on December 2, 2015 for bilateral carpal tunnel syndrome. On March 8, 2019 it awarded appellant additional schedule award compensation for four percent permanent impairment of the left upper extremity and two percent permanent impairment of the right upper extremity.

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

ROM deficits of the shoulders and elbows. Dr. Ellis opined that the ROM rating method best represented appellant's upper extremity permanent impairment because it provided greater impairment ratings than those derived utilizing the DBI rating method.

On July 13, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On July 22, 2020 OWCP referred appellant's case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). In an August 4, 2020 report, Dr. Katz opined that Dr. Ellis' June 30, 2020 report could not be accepted as probative for the purpose of recommending a schedule award because Dr. Ellis failed to provide worksheets, narratives, or calculations to explain the method by which he arrived at his determination of impairment.

On August 13, 2020 OWCP referred appellant, along with the case record and a statement of accepted facts, to Dr. Joseph G. Sankoorikal, a Board-certified physiatrist for a second opinion examination and evaluation. It requested that Dr. Sankoorikal provide an opinion regarding permanent impairment of appellant's upper extremities under the sixth edition of the A.M.A., *Guides.*

In an August 31, 2020 report, Dr. Sankoorikal discussed appellant's factual and medical history and reported the findings of his physical examination. He noted that examination of the shoulders showed that there was no muscle wasting. Dr. Sankoorikal obtained ROM findings for appellant's shoulders and elbow, taking three measurements for each type of motion. He noted that reported pain in appellant's shoulders limited his ROM. Dr. Sankoorikal diagnosed rotator cuff tendinopathy bilaterally along with osteoarthritic changes in the acromioclavicular joint bilaterally, and chronic pain in both shoulders.

Dr. Sankoorikal referred to the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 15-5 (Shoulder Regional Grid) on page 402, the class of diagnosis (CDX) for right shoulder tendinitis resulted in a class 1 impairment with a default value of three percent. He assigned a grade modifier for functional history (GMFH) of 1; a grade modifier for physical examination (GMPE) of 1; and a grade modifier for clinical studies (GMCS) of 1. Dr. Sankoorikal utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (1 - 1) = 0, which resulted in a grade C or three percent permanent impairment of the right upper extremity. Utilizing a similar DBI rating calculation for right acromioclavicular joint arthropathy, he found that appellant also had three percent permanent impairment of the right upper extremity due to this condition. Therefore, under the DBI rating method, appellant had a total of six percent permanent impairment of the right upper extremity. Dr. Sankoorikal performed similar calculations under the DBI rating method to find that, due to tendinitis and acromioclavicular joint arthropathy, appellant had six percent permanent impairment of the left upper extremity. He also utilized the ROM rating method found at Table 15-34, page 475, to find, for the right shoulder, three percent permanent impairment for flexion of 130 degrees, one percent for extension of 40 degrees, three percent for abduction of 125 degrees, one percent for adduction of 30 degrees, two percent for internal rotation of 65 degrees, and two percent for external rotation of 50 degrees. Dr. Sankoorikal added these values to equal 12 percent permanent impairment of the right upper extremity. He also utilized the ROM rating method to

find, for the left shoulder, three percent permanent impairment for flexion of 110 degrees, one percent for extension of 40 degrees, three percent for abduction of 110 degrees, one percent for adduction of 30 degrees, two percent for internal rotation of 65 degrees, and two percent for external rotation of 50 degrees. Dr. Sankoorikal added these values to find 12 percent permanent impairment of the left upper extremity. He concluded that appellant had 12 percent permanent impairment of each upper extremity given that he had a higher rating for permanent impairment under the ROM rating method than under the DBI rating method.

OWCP again referred appellant's case to Dr. Katz in his role as DMA and requested that he review Dr. Sankoorikal's report and provide an opinion on the permanent impairment of appellant's upper extremities. In an October 1, 2020 report, Dr. Katz referenced the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 15-5, the CDX for right shoulder tendinitis resulted in a class 1 impairment with a default value of three percent. He assigned a GMFH of 1 and a GMPE of 2 and indicated that a GMCS was not applicable. Dr. Katz utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) = (1 - 1) + (2 - 1) = 1, which resulted in a grade D or four percent permanent impairment of the right upper extremity. He also utilized the DBI rating method to find that, under Table 15-4, the CDX for right elbow epicondylitis resulted in a class 1 impairment with a default value of one percent. Dr. Katz assigned a GMPE of 1 and indicated that a GMFH and a GMCS were not applicable. He utilized the net adjustment formula, (GMPE - CDX) = (1 - 1) = 0, which resulted in a grade C or one percent permanent impairment of the right upper extremity. Dr. Katz also provided similar DBI rating method calculations for the left upper extremity to find four percent impairment due to shoulder tendinitis and one percent impairment due to elbow epicondylitis.

Dr. Katz then applied the ROM rating method and indicated that he agreed with Dr. Sankoorikal that appellant had 12 percent permanent impairment of each upper extremity due to ROM deficits of the shoulders. He also provided ROM calculations for the elbows under Table 15-33 on page 474. For the right elbow, Dr. Katz found three percent permanent impairment for flexion of 130 degrees and, for the left elbow, he found three percent permanent impairment for flexion of 120 degrees. He determined that, under Table 15-35 on page 477, there was no further modification of these ROM values. Dr. Katz then added the 12 and 3 percent values for each upper extremity to find that, based on ROM, appellant had 15 percent permanent impairment of each upper extremity. He concluded that appellant's total permanent impairment for each upper extremity was 15 percent given that he had a higher rating for permanent impairment under the ROM rating method than under the DBI rating method.[6] Dr. Katz indicated that appellant was not entitled to further schedule award compensation for the right upper extremity because the above-noted 15 percent impairment overlapped appellant's previous award of 17 percent for that member. However, he further found that appellant was entitled to an additional award for 1 percent impairment of the left upper extremity because subtraction of appellant's previous overlapping award of 14 percent for that member from the above-noted 15 percent impairment resulted in a residual, nonoverlapping impairment of 1 percent.

OWCP requested that Dr. Katz provide further clarification of his October 1, 2020 report regarding his comments regarding overlapping schedule awards. In an October 23, 2020

[6] Dr. Katz indicated that appellant reached maximum medical improvement (MMI) on August 31, 2020.

addendum, Dr. Katz noted that, upon further review of the records, the impairments for appellant's elbows (3 percent for each upper extremity) did overlap with the previously granted schedule awards, but the shoulder impairments (12 percent for each upper extremity) did not. He indicated that, therefore, the net awards were recalculated by considering only the new impairment ratings for the shoulders as follows: For the right upper extremity, the present shoulder impairment of 12 percent was first combined with the prior cumulative award of 17 percent under the Combined Values Chart on page 604 of the sixth edition of the A.M.A., *Guides*, which totaled 27 percent. Dr. Katz indicated that the prior award was then subtracted (27 percent minus 17 percent) and thus the net additional award now due for permanent impairment of the right upper extremity was 10 percent. He noted that, for the left upper extremity, the present shoulder impairment of 12 percent was first combined with the prior cumulative award of 14 percent per the Combined Values Chart, which totaled 24 percent. Dr. Katz indicated that the prior award was then subtracted (24 percent minus 14 percent) and thus the net additional award now due for permanent impairment of the left upper extremity was 10 percent. He noted, "these recommendations shall correct and supersede my prior recommendations."

By decision dated November 19, 2020, OWCP granted appellant a schedule award for an additional 10 percent permanent impairment of the left upper extremity (24 percent less prior awards for 14 percent permanent impairment of the left upper extremity); and for an additional 10 percent permanent impairment of the right upper extremity (27 percent less prior awards for 17 percent permanent impairment of the right upper extremity). The award ran for 62.4 weeks from August 31, 2020 through November 10, 2021. OWCP based its schedule award decision on the October 1 and 23, 2020 reports of Dr. Katz, who evaluated August 31, 2020 findings of Dr. Sankoorikal.

Appellant appealed to the Board. By order dated January 31, 2022, the Board set aside the November 19, 2020 decision finding that, for a full and fair adjudication, it was necessary to administratively combine OWCP File No. xxxxxx730 with OWCP File Nos. xxxxxx167, xxxxxx020, and xxxxxx833, so all of the relevant claim files could be considered. It remanded the case to OWCP for further development followed by a *de novo* decision regarding appellant's permanent impairment.

On remand, OWCP administratively combined the case files per the Board's January 31, 2022 order.[7] By decision dated March 30, 2022, it granted appellant additional schedule award compensation for 10 percent permanent impairment in each upper extremity such that he was now compensated for 24 percent permanent impairment of his left upper extremity and 27 percent permanent impairment of his right upper extremity.

[7] OWCP designated OWCP File No. xxxxx020 as the master file.

LEGAL PRECEDENT

The schedule award provisions of FECA,[8] and its implementing federal regulations,[9] 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. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[10] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[11]

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology versus the ROM methodology for rating of upper extremity impairments.[12] Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

> "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.)[13]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the elbows and shoulders, the relevant portions of the arm for the present case, reference is made to Table 15-4 (Elbow Regional Grid) beginning on page 398, and Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the CDX is determined from the Elbow or Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[14] Under Chapter 2.3, evaluators are

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] *Id.*

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

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

[13] *Id.*

[14] *See* A.M.A., *Guides* (6th ed. 2009) 405-12. Table 15-4 and Table 15-5 also provide that, if motion loss is present for a claimant with certain diagnosed elbow and shoulder conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such an ROM rating stands alone and is not combined with a DBI rating. *Id.* at 398-05, 475-78.

directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[15]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 24 percent permanent impairment of his left upper extremity and 27 percent permanent impairment of his right upper extremity, for which he previously received schedule award compensation.

In an October 1, 2020 report, Dr. Katz referenced the sixth edition of the A.M.A., *Guides* and applied the DBI rating method to find that, under Table 15-5 beginning on page 401, appellant had four percent permanent impairment of each upper extremity due to shoulder tendinitis. He also applied the DBI rating method to find that, under Table 15-4 beginning on page 398, appellant had one percent permanent impairment of each upper extremity due to elbow tendinitis. Dr. Katz then applied the ROM rating method found at Table 15-34, page 475, to find, for the right shoulder, three percent permanent impairment for flexion of 130 degrees, one percent for extension of 40 degrees, three percent for abduction of 125 degrees, one percent for adduction of 30 degrees, two percent for internal rotation of 65 degrees, and two percent for external rotation of 50 degrees. He added these values to equal 12 percent permanent impairment of the right upper extremity. Dr. Katz also applied the ROM rating method to find, for the left shoulder, three percent permanent impairment for flexion of 110 degrees, one percent for extension of 40 degrees, three percent for abduction of 110 degrees, one percent for adduction of 30 degrees, two percent for internal rotation of 65 degrees, and two percent for external rotation of 50 degrees. He added these values to equal 12 percent permanent impairment of the left upper extremity. Dr. Katz also provided ROM calculations for the elbows under Table 15-33 on page 474. For the right elbow, he found three percent permanent impairment for flexion of 130 degrees and, for the left elbow, he found three percent permanent impairment for flexion of 120 degrees. Dr. Katz determined that, under Table 15-35 on page 477, there was no further modification of these ROM values. He then added the 12 and 3 percent values for each upper extremity to find that, based on ROM, appellant had 15 percent permanent impairment of each upper extremity. Dr. Katz concluded that appellant's total permanent impairment for each upper extremity was 15 percent given that he had a higher rating for permanent impairment under the ROM rating method than under the DBI rating method.[16] He indicated that appellant was not entitled to further schedule award compensation for the right upper extremity because the above-noted 15 percent impairment overlapped appellant's previous award of 17 percent for that member. However, Dr. Katz further found that appellant was entitled to an additional award for 1 percent impairment of the left upper extremity because subtracting appellant's previous overlapping award of 14 percent for that member from the above-noted 15 percent impairment resulted in a residual, nonoverlapping impairment of 1 percent.

OWCP requested that Dr. Katz provide further clarification of his October 1, 2020 report regarding his comments regarding overlapping schedule awards. The Board finds that, in an October 23, 2020 addendum, Dr. Katz corrected an error he had previously made regarding the overlapping nature of appellant's schedule awards. He noted that, upon further review of the

[15] *Id.* at 23-28.

[16] Dr. Katz indicated that appellant reached MMI on August 31, 2020.

records, the impairments for appellant's elbows (3 percent for each upper extremity) did overlap with the previously granted schedule awards, but the shoulder impairments (12 percent for each upper extremity) did not. Dr. Katz indicated that, therefore, the net awards were recalculated by considering only the new impairment ratings for the shoulders as follows: For the right upper extremity, the present shoulder impairment of 12 percent was first combined with the prior cumulative award of 17 percent under the Combined Values Chart on page 604 of the sixth edition of the A.M.A., *Guides*, which totaled 27 percent. Dr. Katz indicated that the prior award was then subtracted (27 percent minus 17 percent) and thus the net additional award now due for permanent impairment of the right upper extremity was 10 percent. He noted that, for the left upper extremity, the present shoulder impairment of 12 percent was first combined with the prior cumulative award of 14 percent per the Combined Values Chart, which totaled 24 percent. Dr. Katz indicated that the prior award was then subtracted (24 percent minus 14 percent) and thus the net additional award now due for permanent impairment of the left upper extremity was 10 percent.

The Board, therefore, finds that OWCP properly relied on the opinion of Dr. Katz, the DMA, to find that appellant had no greater than 24 percent permanent impairment of his left upper extremity and 27 percent permanent impairment of his right upper extremity. The Board finds that, in the above-described calculations, Dr. Katz reached conclusions regarding appellant's permanent impairment that are in accordance with the standards of the sixth edition of the A.M.A., *Guides.*

Appellant submitted a June 30, 2020 report from Dr. Ellis, an attending physician, who determined that appellant had 40 percent permanent impairment of the right upper extremity and 30 percent permanent impairment of the left upper extremity due to ROM deficits of the shoulders and elbows. However, the Board finds that this report is of limited probative value because Dr. Ellis failed to provide supporting findings and did not provide adequate explanation of how his conclusions were derived in accordance with the A.M.A., *Guides*. The Board has held that an opinion on permanent impairment is of limited probative value if it is not derived in accordance with the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses.[17]

As appellant has not established greater than 24 percent permanent impairment of his left upper extremity or 27 percent permanent impairment of his right upper extremity, for which he previously received schedule award compensation, the Board finds that he has not met his burden of proof.

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.

[17] *See N.A.*, Docket No. 19-0248 (issued May 17, 2019); *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 24 percent permanent impairment of his left upper extremity and 27 percent permanent impairment of his right upper extremity, for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board