

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

---

	)	
<b>R.T., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0811</b>
	)	<b>Issued: January 12, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>OKLAHOMA CITY VA MEDICAL CENTER,</b>	)	
<b>Oklahoma City, OK, Employer</b>	)	
	)	

---

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant<sup>1</sup></i>	
<i>Office of Solicitor, for the Director</i>	

**ORDER REMANDING CASE**

Before:  
 PATRICIA H. FITZGERALD, Deputy Chief Judge  
 VALERIE D. EVANS-HARRELL, Alternate Judge  
 JAMES D. McGINLEY, Alternate Judge

On May 4, 2022 appellant, through counsel, filed a timely appeal from a February 22, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0811.

On June 26, 1996 appellant, then a 39-year-old vascular laboratory technician, filed an occupational disease claim (Form CA-2) alleging that on June 14, 1996 she first realized that her right arm, hand, and wrist severe pain, swelling, numbness, and tingling were causally related to factors of her federal employment. The record reveals that OWCP accepted the claim for bilateral cubital tunnel syndrome (lesion of the ulnar nerve), bilateral elbow and forearm sprain, bilateral foreign body granuloma of the muscle, carbuncle of the right upper arm and forearm, and bilateral

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

benign neoplasm of the skin. It authorized right carpal tunnel release surgeries, which were performed in 1996 and 1998.

By decision dated May 5, 2009, OWCP denied appellant's schedule award claim. It found that she had not submitted any medical evidence establishing a permanent loss of use of a member or function of the body listed under 5 U.S.C. § 8107 or 20 C.F.R. § 10.404.

In a report dated September 29, 2009, Dr. John W. Ellis, a Board-certified family medicine specialist, found that appellant had 16 percent right upper extremity permanent impairment and 6 percent left upper extremity permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> He rated her permanent impairment based on a diagnosis of right ulnar nerve entrapment with decreased elbow range of motion (ROM) and left cubital tunnel entrapment syndrome.<sup>3</sup>

On November 4, 2009 OWCP's hearing representative affirmed the May 5, 2009 schedule award decision, as modified. She noted that, by decision dated September 19, 2001, OWCP had previously granted appellant a schedule award for six percent right upper extremity permanent impairment and four percent left upper extremity permanent impairment. However, the hearing representative found that the appellant had not established entitlement to an increased schedule award.

On December 14, 2009 OWCP forwarded Dr. Ellis' report to Dr. H. Mobley, serving as an OWCP district medical adviser (DMA), for review. In a report dated January 4, 2010, Dr. Arthurs S. Harris, Board-certified orthopedic surgeon, based on his review of the evidence, determined that appellant was entitled to an additional 10 percent right upper extremity schedule award and an additional 1 percent left upper extremity schedule award.

By decision dated January 8, 2010, OWCP vacated the prior May 5 and November 4, 2009 schedule award decisions and remanded the case for a *de novo* decision regarding appellant's entitlement to an additional schedule award.

By decision dated January 19, 2010, OWCP granted appellant a schedule award for an additional 10 percent permanent impairment of the right upper extremity, for a total of 16 percent right upper extremity permanent impairment, and an additional 1 percent permanent impairment of the left upper extremity, for a total of 5 percent left upper extremity permanent impairment.

In a report dated April 16, 2020, Dr. M. Stephen Wilson, a Board-certified physiatrist, found that appellant had nine percent left upper extremity permanent impairment pursuant to the A.M.A., *Guides*. He rated her permanent impairment based on a diagnosis of left cubital tunnel syndrome requiring release.<sup>4</sup>

---

<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> Table 15-23, Entrapment/Compression Neuropathy Impairment, A.M.A., *Guides* 449 (6<sup>th</sup> ed. 2009).

<sup>4</sup> *Id.*

On May 10, 2021 appellant filed a claim for compensation (Form CA-7) for an increased schedule award.

On July 14, 2021 OWCP forwarded Dr. Wilson's report to Dr. Harris, serving as a DMA, for review. In a report dated July 15, 2021, Dr. Harris noted that ROM was not applicable to the accepted diagnosis. Based on his review of the evidence, he determined that appellant was not entitled to an additional schedule award for an increased left upper extremity permanent impairment.

By decision dated August 12, 2021, OWCP denied appellant's claim for an increased schedule award.

On August 18, 2021 appellant, through counsel, requested a telephonic hearing, which was held on December 8, 2021.

By decision dated February 22, 2022, OWCP's hearing representative affirmed the August 12, 2021 decision.

The Board having duly considered the matter finds that this case is not in posture for decision.

The record submitted to the Board is incomplete. OWCP's decision dated September 19, 2001 granting appellant a schedule award for six percent right upper extremity permanent impairment and four percent left upper extremity permanent impairment is missing from the record. Also missing are the reports which served as the basis for the September 19, 2001 schedule award decision, the decision(s) noting the conditions OWCP had accepted, and the initial claim form. As the issue before the Board is whether appellant has met her burden of proof to establish a greater than five percent impairment of the left upper extremity, for which she previously received schedule award compensation, the missing decisions and reports that formed the basis for her prior schedule award are relevant to interpreting the medical evidence of record.

Because the record as transmitted to the Board is incomplete and would not permit an informed adjudication of the case,<sup>5</sup> the Board is unable to properly consider and decide appellant's claim. The case, therefore, is remanded to OWCP for reconstruction and proper assemblage of the record.<sup>6</sup> After such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for an increased schedule award for the left upper extremity. Accordingly,

---

<sup>5</sup> See *E.G., Order Remanding Case*, Docket No. 20-1398 (issued February 2, 2022); *G.B., Order Remanding Case*, Docket No. 20-0236 (issued May 26, 2020); *H.C., Docket No. 19-1976* (issued May 26, 2020); *D.H., Docket No. 17-0224* (issued August 16, 2018).

<sup>6</sup> *Id.*

**IT IS HEREBY ORDERED THAT** the February 22, 2022 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: January 12, 2023  
Washington, DC

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

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

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