

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

A.H., Appellant	)	
	)	
and	)	<b>Docket No. 23-0335</b>
	)	<b>Issued: July 28, 2023</b>
	)	
U.S. POSTAL SERVICE, POST OFFICE,	)	
Coppell, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 6, 2023 appellant filed a timely appeal from a December 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish greater than six percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

**FACTUAL HISTORY**

On November 24, 2020 appellant, then a 47-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 23, 2020 she sustained a left shoulder sprain

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

when she tripped and fell while in the performance of duty. She stopped work on November 23, 2020 and returned on November 24, 2020. OWCP initially accepted the claim for contusion of the left shoulder and unspecified sprain of the left shoulder joint. It subsequently expanded the acceptance of the claim to include adhesive capsulitis of the left shoulder, other synovitis and tenosynovitis, impingement syndrome, and unspecified rotator cuff tear or rupture not specified as traumatic of the left shoulder. Appellant underwent OWCP-authorized left shoulder arthroscopic surgery on August 23, 2021. OWCP paid appellant wage-loss compensation on the supplemental rolls for intermittent disability commencing August 23, 2021. On November 5, 2021 she returned to full-time limited-duty work.

On September 8, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

OWCP, by development letter dated September 21, 2022, requested that appellant submit a medical report from her treating physician addressing whether she had reached maximum medical improvement (MMI) and rating any employment-related impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> It afforded her 30 days to submit the requested evidence.

Appellant submitted a September 16, 2022 report from Dr. Dempsey Gordon, an osteopath specializing in family medicine. Dr. Gordon diagnosed left shoulder osteoarthritis, left shoulder sprain/strain, status post left shoulder subacromial decompression, left shoulder impingement syndrome. He provided three sets of range of motion (ROM) measurements. Dr. Gordon reported findings of flexion 140/135/140 degrees, extension 50/50/50 degrees, abduction 98/100/100 degrees, adduction 50/49/50 degrees, internal rotation 80/78/79 degrees, and external rotation 85/83/85 degrees. He utilized the diagnosis-based impairment (DBI) rating method of the sixth edition of the A.M.A., *Guides* and referred to Table 15-5, pages 401-05. Dr. Gordon identified a class of diagnosis (CDX) of post-traumatic degenerative joint disease and assigned a CDX of 1. He assigned a grade modifier for functional history (GMFH) of 1 under Table 15-7, page 406, grade modifier for physical examination (GMPE) of 1 under Table 15-8, page 408, and grade modifier for clinical studies (GMCS) of 1 under Table 15-9, page 410. Dr. Gordon determined that appellant had five percent permanent impairment of the left upper extremity. Utilizing the ROM method to rate left upper extremity impairment, he referred to Table 15-34, page 475. Dr. Gordon determined that 140 degrees of flexion and 100 degrees of abduction each represented three percent permanent impairment, and 50 degrees of extension, 50 degrees of adduction, 80 degrees of internal rotation, and 85 degrees of external rotation each represented zero percent permanent impairment, for a total permanent impairment rating of six percent. He opined that appellant had six percent permanent impairment of the left upper extremity based on the ROM rating method, which was greater than the five percent permanent impairment based on the DBI rating method. Dr. Gordon determined that she reached MMI on the date of his impairment evaluation.

On November 4, 2022 OWCP routed Dr. Gordon's September 16, 2022 report, a statement of accepted facts (SOAF), and the case record to Dr. Michael M. Katz, a Board-certified

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

orthopedic surgeon, serving as a DMA, for review and determination regarding appellant's left upper extremity permanent impairment in accordance with the sixth edition of the A.M.A., *Guides* and the date of MMI.

In his November 10, 2022 report, Dr. Katz reviewed the SOAF and medical evidence of record, including Dr. Gordon's September 16, 2022 report. He found that MMI occurred on September 16, 2022, the date of Dr. Gordon's impairment evaluation. The DMA concurred with Dr. Gordon's five percent left upper extremity permanent impairment rating based on the DBI method and six percent left upper extremity permanent impairment rating based on the ROM method, noting that the ROM impairment rating represented the greater impairment.

By decision dated December 14, 2022, OWCP granted appellant a schedule award for six percent permanent impairment of the left upper extremity (shoulder). The award ran for 18.72 weeks for the period September 16, 2022 through January 25, 2023 and was based on the opinions of her treating physician, Dr. Gordon, and the DMA, Dr. Katz.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> 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 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>5</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>6</sup> 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.<sup>7</sup>

In addressing 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.<sup>8</sup> After a CDX is determined (including identification of a default grade value), the

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<sup>3</sup> *Id.* at § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

<sup>7</sup> *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>8</sup> *B.B.*, Docket No. 20-1187 (issued November 18, 2021); *M.D., id.*; *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

impairment class is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.<sup>9</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>10</sup>

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 determination of impairment, the CE [claims examiner] should provide this information (*via* the updated instructions noted above) to the rating physician(s).”<sup>11</sup>

FECA Bulletin further advises:

“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.)<sup>12</sup>

The Bulletin also advises:

“If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE.”<sup>13</sup>

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP’s 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.

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<sup>9</sup> A.M.A., *Guides* 383-492; *see B.B., id.; M.P.*, Docket No. 13-2087 (issued April 8, 2014).

<sup>10</sup> *Id.*

<sup>11</sup> FECA Bulletin No. 17-06 (issued May 8, 2017); *B.B., id.; V.L.*, Docket No. 18-0760 (issued November 13, 2018).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

accordance with the A.M.A., *Guides*, with the DMA 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 greater than six percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

Appellant submitted a September 16, 2022 report from Dr. Gordon to support her claim for a schedule award. Dr. Gordon opined that appellant had five percent permanent impairment of the left upper extremity under the DBI methodology and six percent permanent impairment of the left upper extremity under the ROM methodology. He concluded that the ROM methodology yielded the greater impairment.

In accordance with its procedures,<sup>15</sup> OWCP properly routed the case record to its DMA, Dr. Katz. In his November 10, 2022 report, Dr. Katz concurred with Dr. Gordon's six percent left shoulder permanent impairment under the ROM rating methodology and five percent left shoulder permanent impairment under the DBI rating methodology. The DMA opined that the six percent ROM impairment rating represented the greater left upper extremity permanent impairment.

The Board finds that OWCP properly determined that appellant has not established greater than six percent permanent impairment of the left shoulder based on the clinical findings and reports of Dr. Gordon and Dr. Katz.<sup>16</sup> There is no probative medical evidence of record demonstrating greater impairment than that previously awarded.<sup>17</sup>

Appellant may request a schedule award or increased schedule award based at any time 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 six percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

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<sup>14</sup> See *supra* note 6 at Chapter 2.808.6f (February 2013). See also *D.S.*, Docket No. 20-0670 (issued November 2, 2021); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

<sup>15</sup> *Id.*

<sup>16</sup> See *B.L.*, Docket No. 22-0068 (issued October 12, 2022); *D.S.*, Docket No. 20-0670 (issued November 2, 2021); *J.S.*, Docket No. 19-1567 (issued April 1, 2020); *J.M.*, Docket No. 18-1334 (issued March 7, 2019).

<sup>17</sup> See *B.L.*, *id.*; *D.S.*, *id.*; *D.F.*, Docket No. 17-1474 (issued January 26, 2018); *A.T.*, Docket No. 16-0738 (issued May 19, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2023  
Washington, DC

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

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

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