United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 23-0272**
	)	**Issued: October 26, 2023**
U.S. POSTAL SERVICE, HARTFORD PROCESSING & DISTRIBUTION CENTER, Hartford, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 12, 2022 appellant filed a timely appeal from an October 24, 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 October 24, 2022 decision, appellant submitted additional evidence to OWCP. 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 new evidence for the first time on appeal. *Id*.

ISSUE

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

FACTUAL HISTORY

On June 26, 2018 appellant, then a 60-year-old electronic technician, filed a traumatic injury claim (Form CA-1) alleging that on that day he injured his left shoulder after lifting a machine part and feeling a popping sensation while in the performance of duty. He stopped work on June 27, 2018.[3] By decision dated August 28, 2018, OWCP accepted appellant's claim for left shoulder acromioclavicular (AC) sprain. It paid him wage-loss compensation on the supplemental rolls, effective October 15, 2019, on the periodic rolls, effective November 10, 2019, and pursuant to a schedule award, effective February 3, 2022.

A magnetic resonance imaging (MRI) arthrogram of the left shoulder dated August 6, 2019 revealed no evidence of full-thickness retractile rotator cuff tear, suspicious partial undersurface tear involving articular fibers of the supraspinatus tendon with no full-thickness tear demonstrated, and possible posterior labral tear.

On October 15, 2019 Dr. Kenneth R. Alleyne, a Board-certified orthopedist, performed OWCP-authorized left shoulder rotator cuff repair, arthroscopic biceps tenotomy, extensive debridement of the glenohumeral articulation using anterior and posterior portals, and arthroscopic acromioplasty. He diagnosed high-grade partial tear of the left shoulder rotator cuff at the supraspinatus, high-grade biceps tendon tears with tendinopathy, and diffuse anterior, inferior, and posterior labral tears.[4] In a work capacity evaluation (Form OWCP-5c) dated January 30, 2020, Dr. Alleyne returned appellant to part-time light-duty work with restrictions.

By decision dated November 7, 2019, OWCP expanded the acceptance of appellant's claim to include sprain of the left shoulder joint and incomplete rotator cuff tear of the left shoulder.

On February 4, 2020 the employing establishment offered appellant a full-time modified position as an operational maintenance worker with restrictions effective February 4, 2020. Appellant accepted the position and returned to work.[5]

An MRI scan of the left shoulder dated April 2, 2021 revealed attenuated long head of the biceps tendon at the level of the bicipital groove, which probably was chronically torn, widening

[3] The record reveals that appellant retired on October 31, 2021.

[4] On November 7, 2019 OWCP accepted appellant's claim for a recurrence of disability (Form CA-2a) effective October 15, 2019.

[5] In a letter dated February 4, 2020, OWCP noted that appellant returned to work in a full-duty position on a full-time basis effective that day. It noted his actual wages met or exceeded wages of the job held when he was injured. OWCP indicated that it terminated his compensation effective February 4, 2020, as he no longer had disability under FECA.

of the AC joint with post acromioplasty changes demonstrated, cystic changes along the superolateral aspect of the humeral head felt to be degenerative and present on prior examinations, and diffuse attenuated long head of the biceps tendon.

On January 6, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated January 12, 2022, OWCP requested that appellant submit an impairment evaluation from his attending physician that addressed whether he had obtained maximum medical improvement (MMI) and to provide a permanent impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides)*.[6] It afforded him 30 days to submit the necessary evidence.

Appellant submitted a February 3, 2022 report from Dr. Alleyne, who diagnosed pain in the left shoulder, radiculopathy of the cervical region, and other cervical disc degeneration at C4-5.

By decision dated March 23, 2022, OWCP denied appellant's claim for a schedule award.

OWCP received additional evidence. In a February 3, 2022 report, Dr. Alleyne diagnosed traumatic rotator cuff tear and noted that appellant reached MMI on June 24, 2021. He advised that appellant underwent arthroscopic rotator cuff repair on October 15, 2019; however, he continued to have subjective complaints of pain and restricted motion in the left shoulder. Dr. Alleyne reported range of motion (ROM) findings for the left shoulder of 170 degrees of forward flexion, 165 degrees of abduction, 80 degrees of external rotation, and 45 degrees of internal rotation. He noted 5/5 internal rotation strength. Dr. Alleyne evaluated appellant's impairment using the fifth edition[7] and the sixth edition of the A.M.A., *Guides*, finding appellant had a "class 1 problem with pain and residual symptoms" and functional loss. He noted that appellant's left shoulder fell under grade D for 11 percent permanent impairment of the left upper extremity.

On April 20, 2022 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 28, 2022, after a preliminary review, OWCP's hearing representative found that the case was not in posture for decision and vacated OWCP's March 23, 2022 decision denying appellant's schedule award claim. The hearing representative remanded the case and instructed OWCP to provide an updated statement of accepted facts (SOAF) and the case record to its district medical adviser (DMA) for a report to explain whether appellant had any impairment of the left upper extremity causally related to his accepted work conditions in conformance with the sixth edition of the A.M.A., *Guides*. Following this and any other further development deemed necessary, OWCP was to issue a *de novo* decision.

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

[7] A.M.A., *Guides* (5th ed. 2001).

On August 23, 2022 OWCP routed Dr. Alleyne's February 3, 2022 report, a SOAF, and the case record to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP DMA, for review and a determination of appellant's date of MMI and the permanent impairment of his left upper extremity under the sixth edition of the A.M.A., *Guides*. It requested that Dr. Harris review Dr. Alleyne's February 3, 2022 report and provide an opinion discussing whether he agreed with its findings.

In an August 26, 2022 report, Dr. Harris discussed the findings in Dr. Alleyne's February 3, 2022 report. He diagnosed left shoulder arthroscopic rotator cuff repair, biceps tenotomy, and debridement on October 15, 2019. Dr. Harris referred to the sixth edition of the A.M.A., *Guides*, and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 15-5 (Shoulder Regional Grid), page 403, the class of diagnosis (CDX) for appellant's full-thickness rotator cuff tear resulted in a Class 1 impairment with a default value of 5. He calculated that appellant had a net adjustment of +2, resulting in movement from the default value of grade C to grade E and corresponding to seven percent permanent impairment of the left upper extremity. Dr. Harris noted that Dr. Alleyne did not show all his calculations or steps in the impairment rating process. Regarding the ROM impairment rating method, he noted that there was insufficient information contained in the case record to calculate impairment utilizing the ROM method. Dr. Harris indicated that the report of Dr. Alleyne did not contain complete measurements for the left shoulder and there was no documentation of retained shoulder extension or adduction. He concluded that Dr. Alleyne's impairment rating was not performed according to the standards of the A.M.A., *Guides* and therefore could not be used to calculate permanent impairment.

On September 15, 2022 OWCP advised Dr. Alleyne that additional evidence was required to calculate the final impairment rating. It specifically asked him to clarify whether appellant had a loss of ROM of the left shoulder and, if so, to provide three independent measurements of appellant's left shoulder ROM. No response was received.

By decision dated October 24, 2022, OWCP granted appellant a schedule award for seven percent permanent impairment of the left upper extremity. The period of the award ran for 21.84 weeks from February 3 through July 5, 2022.

LEGAL PRECEDENT

The schedule award provisions of FECA[8] and its implementing 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 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

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

standard for evaluating schedule losses.[10] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[11] 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.[12]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF): A Contemporary Model of Disablement*.[13] Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).[14] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[15] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[16]

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

> "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).
>
> "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*

---

[10] *Id., see also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[11] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id.* at Part 2 -- Claims, *Schedule Awards,* Chapter 2.808.5a (March 2017).

[12] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

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

[14] *Id.* at 494-531.

[15] *Id.* at 411.

[16] *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

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

impairment rating for the diagnosis in question, the method producing the higher rating should be used." (Emphasis in the original.)[18]

The Bulletin further provides:

"If the medical evidence of record is [in]sufficient for the DMA to render a rating on ROM where allowed, the DMA should advise as to the medical evidence necessary to complete the rating. However, the DMA should still render an impairment rating using the DBI method, if possible, given the available evidence.[19]

"Upon receipt of such a report, and if the impairment evaluation was provided from the claimant's physician, the CE should write to the claimant advising of the medical evidence necessary to complete the impairment assessment and provide 30 days for submission. Any evidence received in response should then be routed back to the DMA for a final determination. Should no evidence be received within 30 days of the date of the CE's letter, the CE should proceed with a referral for a second opinion medical evaluation to obtain the medical evidence necessary to complete the rating. After receipt of the second opinion physicians' evaluation, the CE should route that report to the DMA for a final determination."[20]

ANALYSIS

The Board finds that this case is not in posture for decision.

In support of his schedule award claim, appellant submitted a February 3, 2022 report from Dr. Alleyne finding that he had 11 percent permanent impairment of the left upper extremity. Dr. Alleyne reported ROM for the left shoulder of 170 degrees of forward flexion, 165 degrees of abduction, 80 degrees of external rotation, and 45 degrees of internal rotation. He noted using the fifth and the sixth editions of the A.M.A., *Guides*, to calculate 11 percent permanent impairment to the left upper extremity.

In accordance with its procedures,[21] OWCP properly referred the evidence of record to Dr. Harris, serving as the DMA. In a report dated August 26, 2022, Dr. Harris utilized the DBI rating method and determined that appellant had seven percent permanent impairment of the left upper extremity due to rotator cuff injury, full-thickness tear. He explained that there was insufficient information contained in the case file to calculate impairment rating utilizing the ROM method for the diagnosed full-thickness rotator cuff tear because Dr. Alleyne's report did not contain complete measurements for the left shoulder including extension and adduction.

[18] *Id.*

[19] *Id.*; *R.L.*, Docket No. 19-1793 (issued August 7, 2020).

[20] *Id. See also W.H.*, Docket No. 19-0102 (issued June 21, 2019).

[21] *See supra* note 11.

Dr. Harris opined that the DBI method was the appropriate rating criteria for the accepted conditions.

On September 15, 2022 OWCP forwarded Dr. Harris' report to Dr. Alleyne and requested that he clarify whether appellant had a loss of ROM of the left shoulder and, if so, to provide three measurements of appellant's left shoulder ROM. Dr. Alleyne did not respond. By decision dated October 24, 2022, OWCP granted appellant seven percent permanent impairment of the left upper extremity based on the August 26, 2022 report from Dr. Harris.

Pursuant to FECA Bulletin No. 17-06, if OWCP advises the claimant of the evidence necessary to evaluate permanent impairment using the ROM method, but does not receive such evidence, it should refer the claimant for a second opinion evaluation to obtain the evidence necessary to complete the rating.[22] OWCP failed to follow the procedures outlined in FECA Bulletin No. 17-06 by referring appellant for a second opinion after Dr. Alleyne did not respond to OWCP's request for clarification of ROM finding for the left shoulder.

The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[23] Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case. While OWCP began to develop the evidence, it failed to complete its obligation to secure a proper evaluation regarding permanent impairment of the upper extremities based upon the ROM methodology.[24] Therefore, it failed to resolve the issue in the case.[25]

On remand OWCP shall refer appellant for a second opinion examination to obtain the evidence necessary to calculate his left upper extremity impairments using both the ROM and DBI methods.[26] Following this and such other further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

---

[22] *Id. See also W.H.*, Docket No. 19-0102 (issued June 21, 2019).

[23] *See E.W.*, Docket No. 17-0707 (issued September 18, 2017).

[24] *M.A.*, Docket No. 19-1732 (issued September 9, 2020).

[25] *See X.Y.*, Docket No. 19-1290 (issued January 24, 2020); *K.G.*, Docket No. 17-0821 (issued May 9, 2018).

[26] *See R.C.*, Docket No. 19-1385 (issued September 8, 2020).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 26, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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