United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket Nos. 23-0083; 23-0084**
	)	**Issued: March 21, 2024**
U.S. POSTAL SERVICE, CORPUS CHRISTI PROCESSING & DISTRIBUTION CENTER, Corpus Christi, TX, 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 October 26, 2022 appellant filed a timely appeal from September 30, October 11 and 13, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant has more than four percent permanent impairment of her right upper extremity for which she previously received a schedule award; (2) whether

[1] The Board notes that following the October 13, 2022 decision, OWCP received additional evidence. 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.*

[2] 5 U.S.C. § 8101 *et seq.*

appellant has met her burden of proof to establish disability from work commencing July 22, 2022 causally related to her accepted June 2, 2022 employment injury; and (3) whether appellant has met her burden of proof to establish disability from work commencing August 20, 2022 causally related to her accepted 2018 employment conditions.

FACTUAL HISTORY

On January 30, 2019 appellant, then a 48-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder, bilateral hand, and bilateral wrist conditions causally related to factors of her federal employment including performing repetitive duties which included lifting, carrying, pulling, pushing, and reaching or throwing over her head.[3] She first became aware of her condition and its relationship to her federal employment on April 25, 2018. Appellant stopped work on January 22, 2019. OWCP accepted the claim under OWCP File No. xxxxxx938 for right shoulder sprain, superior glenoid labrum lesion, right hand synovitis and tenosynovitis, left hand synovitis and tenosynovitis, left wrist sprain, and bilateral carpal tunnel syndrome. Appellant returned to light-duty work on February 18, 2019 and accepted modified mail processing clerk positions beginning on March 2, 2020. The duties consisted of standing or sitting for up to five hours per day, performing fine manipulation for up to five hours per day, and simple grasping for up to five hours per day.

On November 24, 2020 appellant underwent an OWCP-authorized right shoulder arthroscopic labral repair, biceps tenodesis, and glenoid chondroplasty. Beginning November 24, 2020 OWCP paid appellant wage-loss compensation on the periodic rolls. Appellant returned to light-duty work on January 2, 2021.

In a report dated July 16, 2021, Dr. Charles Breckenridge, a Board-certified orthopedic surgeon, provided an impairment rating of appellant's right shoulder, referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[4] He noted that appellant had loss of range of motion (ROM) when compared to the unaffected side. Utilizing the diagnosis-based impairment (DBI) methodology under Table 15-5, Shoulder Regional Grid, on page 404 of the A.M.A., *Guides*, Dr. Breckenridge identified the class of diagnosis (CDX) of unidirectional shoulder instability as a Class 1, grade 2 impairment, which yielded a default value of 11 percent. He applied a grade modifier for functional history (GMFH) of 1 using Table 15-7, page 406, a grade modifier for physical examination (GMPE) of

[3] Appellant subsequentially filed a Form CA-2 alleging that on April 13, 2020 she became aware that she had developed a consequential left shoulder condition as a result of her accepted right shoulder injuries. OWCP assigned OWCP File No. xxxxxx923 and accepted this claim for left shoulder sprain and lesions. She filed a Form CA-2 on June 6, 2022 alleging that on May 10, 2022 she realized that she had developed neck pain, nausea, vomiting, and facial numbness due to repetitive movements of the arms, shoulders, upper back, and neck. OWCP assigned OWCP File No. xxxxxx738 and accepted this claim for cervical sprain and cervical spondylosis with radiculopathy. On June 6, 2022 appellant filed a traumatic injury claim (Form CA-1) alleging that on June 5, 2022 a coworker threw a parcel and accidently hit her in the left side of the head. OWCP assigned OWCP File No. xxxxxx694 and accepted this claim for concussion without loss of consciousness. Appellant filed a Form CA-1 on June 6, 2022 in OWCP File No. xxxxxx692 alleging bilateral arm conditions. On August 22, 2022 OWCP administratively combined these claim files with the current claim, OWCP File No. xxxxxx938, designated as the master file.

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

1 using Table 15-8, page 408, and determined that a grade modifier for clinical studies (GMCS) was not applicable as it was used to reach the diagnosis.

On July 27, 2021 OWCP referred the record, including a statement of accepted facts (SOAF), to Dr. Morley Slutsky, a physician specializing in occupational medicine serving as a district medical adviser (DMA), to determine appellant's percentage of permanent impairment of the right shoulder and the date of maximum medical improvement (MMI). In a report dated August 6, 2021, Dr. Slutsky requested that Dr. Breckenridge provide physical findings in support of his permanent impairment rating and a date of maximum medical improvement (MMI).

In a development letter dated August 24, 2021, OWCP requested that appellant submit a permanent impairment rating based on the sixth edition of the A.M.A., *Guides*, which addressed the issues raised by the DMA, including whether appellant had reached MMI, the right shoulder diagnosis on which the impairment was based, appropriate measurements and findings, as well as a recommended percentage of permanent impairment of the affected member. It afforded appellant 30 days to submit the requested evidence.

OWCP received additional evidence. In notes dated June 3, 2020 through July 16, 2021, Dr. Kyle Wilson, an osteopath, and Dr. Michael Montgomery, a Board-certified internist, described appellant's findings and medical treatment before and after right shoulder surgery. On July 16, 2021 Dr. Wilson found that appellant had reached MMI and diagnosed a glenoid labrum tear of the right shoulder.

On September 9, 2021 Dr. Breckenridge related that when he examined appellant's right shoulder on April 22, 2021 he measured ROM of the right shoulder as 150 degrees forward elevation, 55 degrees external rotation, and internal rotation to the T-12 level. He noted mildly positive impingement sign and negative crossarm adduction test. Dr. Breckenridge found apprehension in anterior instability, negative drop arm test, weakness with discomfort on internal rotation, and no clinical evidence of a full-thickness subscapularis tendon tear. He repeated his impairment rating of 11 percent permanent impairment of the right upper extremity and noted that it was calculated based on shoulder instability.

On October 21, 2021 OWCP referred the additional evidence to the DMA to determine appellant's percentage of permanent impairment of the right shoulder. In his October 27, 2021 report, Dr. Slutsky found that there was no evidence in the medical records of shoulder instability. He determined that the appropriate CDX was labral injury resulting in a Class 1 impairment under Table 15-5 on page 404, with a default value of three percent. Dr. Slutsky further found that there were no valid upper extremity ROM measurements. He recommended a second opinion evaluation.

In a November 17, 2021 letter, OWCP requested that Dr. Breckenridge clarify his opinion with regard to the impairment rating of appellant's right shoulder. It provided him with the DMA's impairment rating and requested a narrative report addressing any disagreement with this rating and afforded 30 days to provide the requested information. There was no response.

On March 4, 2022 OWCP referred appellant, a SOAF, and a series of questions to Dr. Walter A. Del Gallo, a Board-certified orthopedic surgeon, for a second opinion evaluation to

determine the extent of her right shoulder permanent impairment for schedule award purposes. He completed a report on March 24, 2022 and listed physical findings including the average of three measurements of the right shoulder motions. For the right shoulder, Dr. Del Gallo measured flexion of 160 degrees, extension of 50 degrees, abduction of 170 degrees, adduction of 40 degrees, internal rotation of 80 degrees, and external rotation of 70 degrees. He found no evidence of instability with stressing in all planes. Dr. Del Gallo noted that appellant's *Quick*DASH score was 80. He found that appellant had reached MMI on April 16, 2021 and diagnosed glenoid labrum lesion of the right shoulder, a Class 1 impairment, using Table 15-5, page 404, of the A.M.A., *Guides*. Dr. Del Gallo found that appellant's GMFH was three and her GMPE was one. He found that a GMCS was not applicable as the diagnostic studies were preoperative, citing Example 15-11 set forth in the A.M.A., *Guides* on page 481. These adjustments resulted in a net adjustment of 2 and grade D or 5 percent permanent impairment of the right upper extremity. Dr. Del Gallo further noted that appellant's loss of ROM was three percent due to loss of right shoulder flexion according to Table 15-35 on page 475 of the A.M.A., *Guides*, which was less than the DBI estimate.

On April 8, 2022 OWCP referred the additional evidence to the DMA for calculation of appellant's permanent impairment for schedule award purposes. In an April 14, 2022 report, Dr. Slutsky disagreed with Dr. Del Gallo's use of a GMFH, finding that in accordance with page 406-7 of the A.M.A., *Guides*, if the GMFH differs by two or more grades from that described by physical examination or clinical studies, the functional history should be assumed to be unreliable and excluded from the grading process. He further found that a GMPE was not applicable as the physician only documented one motion per joint. Dr. Slutsky found a GMCS of two, for a net adjustment of one,[5] which resulted in a grade D or four percent permanent impairment of the right upper extremity. He noted that as ROM methodology resulted in three percent permanent impairment, appellant was entitled to be rated based on the greater sum of the DBI. Dr. Slutsky determined that the date of MMI was March 24, 2022.

On April 29, 2022 OWCP requested clarification from Dr. Del Gallo regarding the use of GMFH. In a supplemental report dated July 7, 2022, Dr. Del Gallo agreed that GMFH should be excluded. He found a GMPE of one and that a GMCS was not applicable. Dr. Del Gallo found a net adjustment of zero and three percent permanent impairment of the right upper extremity.

On June 6, 2022 appellant filed a traumatic injury claim (Form CA-1) alleging on June 2, 2022 she experienced pain in her left rotator cuff and deltoid insertion and her arm repetitively inserting labels into holders while in the performance of duty. She stopped work on June 2, 2022. OWCP accepted the claim under OWCP File No. xxxxxx692 for bilateral shoulder sprains.

On June 24, 2022 a physician assistant found that appellant was totally disabled due to the June 2, 2022 employment injury. He also completed a duty status report (Form CA-17) dated July 8, 2022.

In a report dated June 25, 2022, Dr. Viraf Cooper, a Board-certified neurosurgeon, described appellant's history of injury on June 2, 2022 and her continuing bilateral shoulder pain. He diagnosed employment-related bilateral shoulder sprains and found that she was totally

[5] (GMCS - CDX) (2-1) equals 1 net adjustment.

disabled due to decreased range of motion and bilateral shoulder instability. Dr. Cooper advised that the mechanism of injury, findings on examination, and symptoms established that the diagnosed conditions resulted from appellant "repetitively inserting labels in holders in sack racks and placing them overhead and descending to the bottom of the rack at work on June 2, 2022."

On July 11, 2022 a physician assistant found appellant totally disabled.

On July 20, 2022 OWCP referred the additional evidence to the DMA for calculation of appellant's permanent impairment for schedule award purposes. In a report dated August 1, 2022, Dr. Slutsky determined that Dr. Del Gallo failed to include GMCS of 2, noting that Table 15-9, page 410 of the A.M.A., *Guides* provides that clinical studies confirming labral lesion constituted a GMCS of 2, a moderate problem. He again found a GMPE was not applicable as there was only one documented ROM per joint. Application of the net adjustment formula results in a net adjustment of 1 or grade D, four percent permanent impairment of the right upper extremity.

Beginning on July 30, 2022 appellant filed claims for compensation (Form CA-7) for disability from work for the period July 22 through August 19, 2022 due to her June 2, 2022 employment injury.

On July 22, 2022 a medical provider with an illegible signature completed a Form CA-17 and indicated that appellant was totally disabled due to bilateral arm sprains.

In an August 10, 2022 development letter, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation due to her June 2, 2022 employment injury. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.

OWCP received additional evidence. On June 24 and August 5, 2022 medical providers with illegible signatures completed a Form CA-17 and found that appellant was totally disabled due to her accepted bilateral arm sprains.

In a report dated August 17, 2022, Dr. Cooper found that appellant was totally disabled beginning July 22, 2022 due to decreased range of motion, joint instability, radiculopathy, decreased function, and reduced strength in her bilateral upper extremities. He attributed her disability to her work duties on June 2, 2022 including repetitively inserting labels into holders in sack racks which were overhead and descending causing an onset of pain to her shoulders. Dr. Cooper asserted that the removal from work was medically necessary based on her decreased range of motion and instability of the injured area. He noted that appellant was pending a magnetic resonance imaging scan and referral to a specialist. Dr. Cooper concluded that appellant was unable to work in any capacity due to her June 2, 2022 employment injury beginning July 22, 2022 and that her incapacitation was medically necessary.

On September 2, 2022 appellant filed CA-7 forms for disability from work for the period August 20 through September 30, 2022 due to her April 25, 2018 employment injury.

In a September 9, 2022 development letter, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation due to her 2018 employment injury. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.

OWCP received additional evidence. On August 29, 2022 a medical provider, with an illegible signature, completed a Form CA-17 diagnosing right shoulder strain and labrum lesion right shoulder. He indicated that appellant could resume full-duty work on August 30, 2022 with restrictions of lifting and carrying up to 10 pounds and no pushing or pulling.

In CA-17 forms dated September 12 and 16, 2022, medical providers with illegible signatures diagnosed bilateral arm sprains and released appellant to return to work on September 3 and 17, 2022, respectively, with no lifting or carrying, no climbing, pushing or pulling, and no reaching above the shoulder.

In a September 19, 2022 report, Dr. Cooper listed appellant's employment factors contributing to her 2018 employment-related right shoulder and bilateral hand and wrist conditions and reviewed her medical treatment. He indicated that he had examined her on August 29, 2022 and diagnosed right shoulder superior glenoid labrum tear, right hand tenosynovitis, left hand tenosynovitis, right shoulder sprain, bilateral hand and wrist sprains and bilateral carpal tunnel syndrome. Dr. Cooper asserted that the employing establishment was unable to comply with appellant's work restrictions of lifting and carrying no more 10 pounds, and no pulling or pushing and had no light-duty work available for her.

On September 12, and October 5, 2022 medical providers with illegible signatures completed CA-17 forms and indicated that appellant could return to work on September 3, 2022 with no lifting or carrying, no climbing, no pushing or pulling, and no reaching above the shoulder.

By decision dated September 30, 2022, OWCP denied appellant's claim for compensation finding that she had not established disability from work for the period July 22 through August 19, 2022 due to her June 2, 2022 employment injury.

In a statement dated October 3, 2022, appellant recounted that her physician had released her to return to work with restrictions on September 2, 2022 under OWCP File No. xxxxxx692. She asserted that she had texted her supervisor on that date and advised that she had been released for work. Appellant texted a manager on September 4, 2022 and e-mailed a copy of a CA-17 form on September 12 and 21, 2022, but had not received any further information from the employing establishment. She indicated that under her head trauma case, OWCP File No. xxxxxx696, a nurse had advised her not to resume work without a light-duty job offer.

By decision dated October 11, 2022, OWCP denied appellant's claim for compensation finding that she had not established disability from work for the period August 20 and continuing due to her accepted 2018 employment conditions.

By decision dated October 13, 2022, OWCP granted appellant a schedule award for four percent permanent impairment of her right upper extremity. The award ran for 12.48 weeks for the period March 24 through June 19, 2022.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA[6] and its implementing regulations[7] 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.[8] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.[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]

In addressing upper extremity impairments, the sixth edition of the A.M.A., *Guides* requires identification of the impairment CDX condition, which is then adjusted by a GMFH, GMPE, and GMCS.[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12]

The A.M.A., *Guides* also provide that ROM impairment methodology is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other DBI sections are applicable.[13] If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.[14] Adjustments for functional history may be made if the evaluator determines that the resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.[15]

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[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id. See M.J.*, Docket No. 22-0685 (issued November 17, 2022); *K.R.*, Docket No. 21-0247 (issued February 25, 2022); *see also Ronald R. Kraynak*, 53 ECAB 130 (2001).

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

[10] *M.J., supra* note 8; *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[11] A.M.A., *Guides* 383-492.

[12] *Id.* at 411.

[13] *Id.* at 461.

[14] *Id.* at 473.

[15] *Id.* at 474.

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.[16] 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.)"[17]

The Bulletin further 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 [claims examiner] CE."[18]

The Board has held that where the residuals of an injury to a member of the body specified in the schedule award provisions of FECA[19] extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, or a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.[20]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[21]

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

[17] A.M.A., *Guides* 477.

[18] FECA Bulletin No. 17-06 (issued May 8, 2017); *V.L.*, Docket No. 18-0760 (issued November 13, 2018); *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

[19] 5 U.S.C. § 8107.

[20] *C.W.*, Docket No. 17-0791 (issued December 14, 2018); *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983). *See supra* note 9 at Chapter 2.808.5e (March 2017).

[21] *See supra* note 9 at Chapter 2.808.6(f) (March 2017); *see D.J.*, Docket No. 19-0352 (issued July 24, 2020).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish greater than four percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

OWCP referred appellant for a second opinion evaluation with Dr. Del Gallo and he completed a report dated March 24, 2022. Dr. Del Gallo provided findings on examination of appellant's right shoulder and found that she had reached MMI. He determined that, under the DBI method for rating impairment appellant had five percent permanent impairment due to labral lesion in accordance with Table 15-5, page 404 of the A.M.A., *Guides*. Dr. Del Gallo found that appellant's GMFH was 3, and GMPE was 1, while GMCS was not applicable, these adjustments resulted in a net adjustment of 2 and grade D or five percent permanent impairment of the right upper extremity. He further noted that appellant's only rating loss of ROM was three percent due to loss of right shoulder flexion, Table 15-35, Shoulder Range of Motion, page 475, A.M.A., *Guides* which was less than the DBI estimate.

In accordance with its procedures,[22] OWCP properly referred the evidence of record to Dr. Slutsky, serving as the DMA. In his report dated April 14, 2022, DMA Slutsky noted that he disagreed with Dr. Del Gallo's impairment analysis. He utilized the DBI method and determined that CDX of labral lesion was a Class 1 impairment with a default value of grade C or three percent permanent impairment under Table 15-5, page 404. The DMA assigned a GMFH of 0, in accordance with pages 406-07 of the A.M.A., *Guides,* and a GMCS of 2. He applied the net adjustment formula and concluded that appellant had four percent permanent impairment of the right upper extremity due to labral lesions. The DMA also used the ROM method to rate appellant's right upper extremity permanent impairment. He referenced Table 15-34, page 475 and found that she had three percent permanent impairment of the right upper extremity.

In his July 7, 2022 supplemental report, Dr. Del Gallo agreed that GMFH should be excluded and also excluded GMCS resulting in a net adjustment of zero or default grade C of three percent permanent impairment of the right upper extremity. He also utilized the ROM rating method to determine the extent of her right upper extremity permanent impairment. Dr. Del Gallo provided three ROM measurements of appellant's right shoulder and determined that under Table 15-34, she had three percent permanent impairment of the right upper extremity.

Upon OWCP's request, the DMA, Dr. Slutsky reviewed Dr. Del Gallo's July 7, 2022 report on August 1, 2022 and he related that his four percent DBI right upper extremity impairment rating remained unchanged. He determined that Dr. Del Gallo failed to include GMCS of 2, Table 15-9, page 410 of the A.M.A., *Guides*, which provides that clinical studies confirming labral lesion were grade modifier 2, a moderate problem. Application of the net adjustment formula results in a net adjustment of 1 or grade D, four percent permanent impairment of the right upper extremity.

The Board finds that the DMA, Dr. Slutsky, discussed how he arrived at his conclusion by listing specific tables and pages in the A.M.A., *Guides*. The DMA accurately summarized the

[22] *Supra* note 9 at Chapter 2.808.6(f); *J.A.*, Docket No. 21-1201 (issued November 3, 2022); *P.W.*, Docket No. 19-1493 (issued August 12, 2020).

relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's conditions which comported with his findings.[23] He properly utilized the DBI method and ROM method to rate appellant's right shoulder condition, pursuant to FECA Bulletin No. 17-06. As the DMA's opinion is also detailed, well rationalized, and based on a proper factual background, the Board finds that it constitutes the weight of the medical evidence.[24]

There is no current medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has greater than the four percent permanent impairment of the right upper extremity previously awarded. Accordingly, appellant has not met her burden of proof to establish that she is entitled to an increased schedule award.[25]

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.

LEGAL PRECEDENT -- ISSUES 2 and 3

An employee seeking benefits under FECA[26] has the burden of proof to establish the essential elements of his or her claim, including that any disability for which compensation is claimed is causally related to the employment injury.[27] The term disability is defined the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[28] For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.[29]

Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence.[30] The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and

[23] *J.M.*, Docket No. 20-0602 (issued October 8, 2021); *G.J.*, Docket Nos. 19-1651 and 20-0199 (issued June 22, 2020; *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

[24] *J.A., supra* note 22; *J.M., id.*; *G.J., id.*

[25] *Id.*

[26] *Supra* note 2.

[27] *A.C.*, Docket No. 20-1340 (issued November 1, 2022); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[28] 20 C.F.R. § 10.5(f).

[29] *Id.* at § 10.501(a); *V.B.*, Docket No. 18-1273 (issued March 4, 2019); *T.A.*, Docket No. 18-0431 (issued November 7, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[30] *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *Amelia S. Jefferson, id.*; *William A. Archer*, 55 ECAB 674 (2004).

medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.[31]

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[32]

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision regarding whether appellant has met her burden of proof to establish disability from work commencing July 22, 2022 causally related to her June 2, 2022 employment injury.

In support of her wage-loss compensation claim, appellant submitted reports dated June 25 and August 17, 2022 from Dr. Cooper finding that she was totally disabled beginning July 22, 2022 due to symptoms from her June 2, 2022 employment injuries of bilateral shoulder sprains including decreased range of motion, joint instability, radiculopathy, decreased function, and reduced strength in her bilateral upper extremities. He explained that appellant's symptoms resulted from her duties of placing labels into racks. Dr. Cooper asserted that the removal from work was medically necessary and supported by her clinical examination and symptomatic state and concluded that appellant was unable to work in any capacity due to her June 2, 2022 employment injury beginning July 22, 2022 and that her incapacitation was medically necessary.

The Board finds that, while the opinion from Dr. Cooper is not completely rationalized, it indicates that appellant was disabled from work due to her accepted employment injury on June 2, 2022.[33] He further provided as a pathophysiological explanation that her decreased range of motion and instability required her to be removed from employment.[34] Accordingly, the Board finds that Dr. Cooper's report, although insufficiently rationalized to meet appellant's burden of proof to establish the claim, raises an uncontroverted inference between her accepted condition and resultant inability to work commencing July 22, 2022 and, thus, it is sufficient to require OWCP to further develop the medical evidence.[35]

[31] *A.C., supra* note 27; *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

[32] *B.M.*, Docket No. 19-1075 (issued February 10, 2021); *R.A.*, Docket No. 19-1752 (issued March 25, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[33] *See A.C., supra* note 27; *D.G.*, Docket No. 18-0043 (issued May 7, 2019); *see also E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[34] *See V.D.*, Docket No. 21-1053 (issued March 20, 2023).

[35] *See A.C., supra* note 27; *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.[36] While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[37]

The case should, therefore, be remanded for further development. On remand OWCP shall refer appellant to a physician in the appropriate field of medicine, along with the case record and a statement of accepted facts for a rationalized medical opinion as to whether appellant's inability to work beginning July 22, 2022 is causally related to her accepted June 2, 2022 employment injury. If the second opinion physician disagrees with the explanations provided by Dr. Cooper, he or she must provide a fully-rationalized explanation explaining why the accepted employment injuries were insufficient to have caused appellant's claimed disability. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

ANALYSIS -- ISSUE 3

The Board finds that this case is not in posture for a decision regarding whether appellant has met her burden of proof to establish disability from work commencing August 20, 2022 due to her accepted 2018 employment conditions.

OWCP accepted appellant's claim for right shoulder sprain, superior glenoid labrum lesion, right hand synovitis and tenosynovitis, left hand synovitis and tenosynovitis, left wrist sprain, and bilateral carpal tunnel syndrome. Appellant maintained that she was released to work with restrictions on September 2, 2022 and texted this information to her supervisor but did not receive a response. She also e-mailed copies of duty status forms. Appellant claimed disability from work due to her accepted employment conditions commencing August 20, 2022.

In his September 19, 2022 report, Dr. Cooper diagnosed right shoulder superior glenoid labrum tear, right hand tenosynovitis, left hand tenosynovitis, right shoulder sprain, bilateral hand and wrist sprains and bilateral carpal tunnel syndrome. He provided work restrictions within those of appellant's modified-duty position. Dr. Cooper asserted that the employing establishment was unable to comply with appellant's work restrictions and she had not been allowed to return to work.

The Board finds that the evidence of record is insufficient to determine whether a light-duty job was available for appellant to perform. Accordingly, the evidence of record must be fully developed so that it contains accurate information regarding appellant's claim in order to determine

[36] *See A.C.*, *supra* note 27; *V.K.*, Docket No. 20-0989 (issued January 25, 2022); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

[37] *V.K., id.*; *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

whether she was provided with a light-duty job within her restrictions as established by Dr. Cooper.[38]

As noted previously, it is well established that, proceedings under FECA are not adversarial in nature and, while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[39] On remand, OWCP shall request that the employing establishment clarify whether she was offered a modified-duty assignment, and if so, when. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than four percent permanent impairment of her right upper extremity, for which she previously received a schedule award. The Board further finds that this case is not in posture for decision regarding whether appellant has met her burden of proof to establish disability from work commencing July 22, 2022 causally related to her accepted June 2, 2022 employment injury. The Board finds that this case is not in posture for a decision regarding whether appellant has met her burden of proof to establish disability from work commencing August 20, 2022 due to her accepted 2018 employment conditions.

[38] *See J.K.*, Docket No. 20-0816 (issued May 4, 2022); *see also J.W.*, Docket No. 20-0021 (issued September 10, 2021); *G.P.*, Docket No. 21-0112 (issued July 14, 2021).

[39] *See D.M.*, Docket No. 18-0527 (issued July 29, 2019); *Donald R. Gervais*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233 (1983).

ORDER

IT IS HEREBY ORDERED THAT the September 30 and October 11, 2022 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further proceedings consistent with this decision of the Board. The October 13, 2022 decision is affirmed.

Issued: March 21, 2024
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