United States Department of Labor
Employees' Compensation Appeals Board

V.D., Appellant	)	
and	)	**Docket No. 23-0989**
	)	**Issued: March 12, 2024**
DEPARTMENT OF THE ARMY, U.S. ARMY MEDICAL RESEARCH INSTITUTE OF INFECTIOUS DISEASE, FORT DETRICK, Frederick, MD, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 20, 2023 appellant filed a timely appeal from a February 27, 2023 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 February 27, 2023 decision, appellant submitted additional evidence to OWCP. 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. *Id.*

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board on a different issue.[3] The facts and circumstances as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 7, 2012 appellant, then a 47-year-old biologist, filed a traumatic injury claim (Form CA-1) alleging that on July 23, 2012 she developed an adverse reaction when she received a routine smallpox vaccination while in the performance of duty. She stopped work on August 7, 2012. On September 18, 2012 OWCP accepted appellant's claim for contact dermatitis due to drugs and medicines in contact with skin.

By decision dated December 4, 2015, OWCP expanded the acceptance of appellant's claim to include the additional conditions of right brachial plexus neuritis and right shoulder myositis.

On July 6, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In medical reports dated July 27 and August 10, 2021, Dr. Willie Yu, a Board-certified physiatrist, evaluated appellant for the purposes of an upper extremity impairment rating. He diagnosed reflex sympathetic dystrophy (RSD) syndrome of the upper limb after a work-related vaccine. Dr. Yu determined that appellant reached maximum medical improvement (MMI) as of July 27, 2021. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 15-26 (Complex Regional Pain Syndrome), page 454, he sustained 40 percent permanent impairment of the right shoulder.

In a November 3, 2021 report, Dr. Yu evaluated appellant and diagnosed RSD of the upper limb, arthritis of right shoulder region, cervical radiculopathy, adhesive capsulitis of the right shoulder, right shoulder pain, neck pain, and RSD. He reported that her right shoulder was nonfunctional on her job.

On July 21, 2022 OWCP referred appellant, along with the case file, a statement of accepted facts, and a series of questions to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion medical examination and determination as to whether she sustained a permanent impairment, and to assign a date of MMI.

[3] Docket No. 15-0807 (issued August 13, 2015).

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

In an August 31, 2022 report, Dr. Hanley indicated that he reviewed the medical evidence of record and provided findings on physical examination, including range of motion (ROM) measurements for the right shoulder. He referred to the sixth edition of the A.M.A., *Guides*,[5] to calculate his impairment rating for the right upper extremity utilizing the DBI method. Dr. Hanley referenced Table 15-5 (Shoulder Regional Grid) on page 401, to determine that the appropriate class of diagnosis (CDX) was shoulder pain, nonspecific shoulder pain following injury, or occupational exposure, resulting in a Class 1 impairment with a grade C default value. He assigned a grade modifier for functional history (GMFH) of 2 based on pain and symptoms with normal activity and use of medication to control symptoms. Dr. Hanley assigned a grade modifier for physical examination (GMPE) of 1 due to minimal palpatory findings consistently documented without observed abnormalities, noting mild decreased ROM and mild muscle atrophy. He assigned a grade modifier for clinical studies (GMCS) of 1. Dr. Hanley utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (2 - 1) + (1 - 1) + (1 - 1) = +1, which resulted in a grade D or one percent permanent impairment of the right upper extremity. He determined that appellant did not have a ratable impairment utilizing the ROM method. Dr. Hanley concluded that she reached MMI on the date of his examination and sustained one percent permanent impairment to the right upper extremity.

On October 26, 2022 OWCP requested Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, serving as an OWCP district medical adviser (DMA), review the case for a determination on whether appellant sustained a permanent impairment of the right upper extremity and date of MMI.

In an October 31, 2022 report, Dr. Harris reported that, utilizing the DBI rating method, appellant sustained one percent permanent impairment of the right upper extremity for shoulder pain status post postneurotic syndrome. He reported that he could not perform the impairment rating of her right upper extremity using the ROM method due to lack of examination findings provided by Dr. Hanley. Dr. Harris explained that Dr. Hanley's report did not contain the complete measurements for the right shoulder and that there was no documentation of trained shoulder abduction, adduction, or extension.

On February 3, 2023 OWCP requested an addendum report from Dr. Harris for ROM impairment. It requested that he review Dr. Hanley's report listing the specific right shoulder ROM measurements to advise on the impairment utilizing the ROM methodology.

In a February 6, 2023 addendum report, Dr. Harris utilized the DBI rating method to find that, due to shoulder pain status post postneurotic syndrome, appellant had one percent permanent impairment of the right upper extremity.[6] He further determined that she had documented motion loss of the right shoulder. Dr. Harris utilized the ROM rating method found at Table 15-34 (Shoulder Range of Motion), page 475, to find, for the right shoulder, three percent permanent impairment for flexion of 160 degrees, one percent for extension of 40 degrees, three percent for abduction of 150 degrees, and two percent for internal rotation of 50

[5] *Id*.

[6] *Id.* at 401, Table 15-5.

degrees.[7] He added these values to equal nine percent permanent impairment of the right upper extremity. Utilizing the greater ROM impairment rating, Dr. Harris determined that appellant sustained nine percent permanent impairment of the right upper extremity. He concluded that she reached MMI on August 31, 2022.

By decision dated February 27, 2023, OWCP granted appellant a schedule award for nine percent permanent impairment of the right upper extremity. The award ran for 28.08 weeks from August 31, 2022 through March 15, 2023 and was based on the August 31, 2022 report of Dr. Hanley and the February 6, 2023 DMA report.

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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter, which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.[10] 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.[11]

The sixth edition requires identifying the impairment class for CDX, which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.[12] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13]

The A.M.A., *Guides* also provides that the ROM impairment is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other diagnosis-based sections are applicable.[14] 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

[7] *Id.* at 475, Table 15-34.

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Chapter 3.700, Exhibit 1 (January 2010).

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

[12] A.M.A., *Guides* 494-531.

[13] *Id.* at 521.

[14] *Id.* at 461.

measured and added.[15] 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.[16]

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).
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> "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*."[17] (Emphasis in the original.)
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> The Bulletin further advises:
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> "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."[18]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[19]

ANALYSIS

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

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[15] *Id.* at 473.

[16] *Id.* at 474.

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

[18] *Id.*

[19] *See D.J.*, Docket No. 19-0352 (issued July 24, 2020).

The Board has reviewed the October 31, 2022 and February 6, 2023 reports of Dr. Harris, the DMA, who evaluated the August 31, 2022 examination findings of Dr. Hanley to calculate the permanent impairment of appellant's right upper extremity. The Board finds that Dr. Harris properly applied the standards of the sixth edition of the A.M.A., *Guides* to find that she has nine percent permanent impairment of the right upper extremity.

The DMA, Dr. Harris, accurately summarized the relevant medical evidence including findings on examination and reached conclusions about appellant's conditions based on these findings.[20] He properly referred to the A.M.A., *Guides* in calculating her percentage of permanent impairment of the right upper extremity based on the ROM method for limited shoulder motion, which provided the greater impairment rating. Dr. Harris determined that appellant had nine percent permanent impairment of the right upper extremity due to loss of shoulder ROM, finding that 160 degrees flexion yielded three percent impairment, 40 degrees extension yielded one percent impairment, 150 degrees abduction yielded three percent impairment, and 50 degrees internal rotation yielded two percent impairment. He added the impairments for a final nine percent permanent impairment of the right upper extremity.[21] Dr. Harris performed similar calculations under the DBI rating method to find that, due to shoulder pain status post postneurotic syndrome, appellant had one percent permanent impairment of the right upper extremity.[22]

As Dr. Harris' report is detailed, well rationalized, and based on a proper factual background, his opinion represents the weight of the medical evidence.[23] There is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides*, demonstrating a greater percentage of permanent impairment of the right upper extremity. Accordingly, as appellant has not submitted medical evidence establishing greater than nine percent permanent impairment of the right upper extremity, the Board finds that she has not met her 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.

CONCLUSION

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

[20] *K.K.*, Docket No. 20-1532 (issued January 24, 2022); *M.S.*, Docket No. 19-1011 (issued October 29, 2019); *W.H.*, Docket No. 19-0102 (issued June 21, 2019); *J.M.*, Docket No. 18-1387 (issued February 1, 2019).

[21] *L.B.*, Docket No. 22-1031 (issued April 6, 2023).

[22] *Supra* note 4.

[23] *R.G.*, Docket No. 21-0491 (issued March 23, 2023).

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2024
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