

<sup>2</sup> The Board notes that, following the issuance of the August 25, 2023 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.*

schedule award compensation; and (2) whether OWCP properly determined appellant's pay rate for his schedule award compensation.

### **FACTUAL HISTORY**

On June 4, 2014 appellant, then a 46-year-old former clerk, filed an occupational disease claim (Form CA-2) alleging that he injured both hands, wrists, and forearms while performing repetitive work duties, which included daily pushing and pulling heavy carts filled with paperwork weighing up to 250 pounds up and down ramps, and filing. He explained that these factors of his federal employment aggravated his carpal tunnel syndrome in both upper extremities.<sup>3</sup> Appellant noted that he first became aware of his condition and realized its relationship to his federal employment on May 15, 2013.

In a memorandum dated April 25, 2014, and letters dated June 16 and September 8, 2014, the employing establishment informed OWCP that appellant was hired as a temporary 60-day employee on March 11, 2013, and that he filed claims for injuries sustained on May 1 and 13, 2013. It noted that he was not employed for an extended period and his assignment ended on June 7, 2013. On August 1, 2014 OWCP received an official copy of appellant's full-time GS-04 clerk position.

OWCP initially accepted appellant's claim for bilateral carpal tunnel syndrome (CTS). Subsequently, on September 3, 2014, and March 20, 2015, it expanded the acceptance of the claim to include other joint derangement, right hand; and trigger finger (acquired), right. Appellant underwent OWCP-authorized decompression of the median nerve of the left carpal tunnel on November 18, 2014, decompression of the median nerve of the right carpal tunnel on December 23, 2014, release of A1 pulley of the right thumb and synovectomy of the flexor pollicis longus on April 28, 2015, repair of the ulnar collateral ligament of the metacarpophalangeal joint of the right thumb on September 18, 2015, decompression of the median nerve, right carpal tunnel, external neurolysis, and extensive synovectomy of the flexor tendons on July 20, 2017.

In a May 10, 2016 memorandum of telephone call (Form CA-110), the employing establishment informed OWCP that appellant's pay rate on May 15, 2013, the date of his last exposure to the employment factors causing the injury, was \$27,990.00. OWCP indicated that this figure would be the effective pay rate for his schedule award compensation.

By decision dated June 7, 2016, OWCP granted appellant a schedule award for four percent permanent impairment of the right upper extremity and three percent permanent impairment of the left upper extremity. The award ran for 21.84 weeks for the period March 7

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<sup>3</sup> The present claim was assigned OWCP File No. xxxxxx957 by OWCP. Appellant has prior claims, including a May 1, 2013 traumatic injury claim (Form CA-1) accepted for other internal derangement and tear of medial meniscus of right knee under OWCP File No. xxxxxx306. He also has a May 13, 2013 traumatic injury claim accepted for other specific joint derangement of right hip, not otherwise classified; sprain of right ankle and distal tibiofibular ligament; rupture of right Achilles tendon; sprain of right foot, other specified sites; right pulmonary embolism and infarction; and venous embolism and thrombosis of deep vessels of lower right extremity under OWCP File No. xxxxxx308. OWCP administratively combined these claims with OWCP File No. xxxxxx306 serving as the master file.

through August 6, 2016. OWCP paid the schedule award at a weekly pay rate of \$537.27, based on the May 15, 2013 date of appellant's last exposure to the employment factors causing the injury.

On August 30, 2016 appellant requested reconsideration. By decision dated November 28, 2016, OWCP denied modification of the June 7, 2016 decision.

On December 6, 2016 appellant requested reconsideration. OWCP, by decision dated December 30, 2016, denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On February 28, 2017 OWCP expanded the acceptance of appellant's claim to include other articular cartilage disorders, left shoulder.

On April 21, 2017 appellant requested reconsideration of the June 7, 2016 decision.

OWCP, on April 27, 2017, again expanded the acceptance of appellant's claim to include radiculopathy, cervical region.

By decision dated August 17, 2017, OWCP vacated the June 7, 2016 decision and reopened the case for merit review. By *de novo* decision dated September 14, 2017, it granted appellant an additional schedule award for three percent permanent impairment of the right upper extremity, totaling seven percent right upper extremity permanent impairment. The award ran for 9.36 weeks for the period August 7 through October 11, 2016. OWCP paid the schedule award at a weekly pay rate of \$581.15, annual salary of \$27,990.00, based on the June 7, 2013 date of appellant's termination from the employing establishment.

On September 11, 2017 the employing establishment informed OWCP that appellant's hourly pay rate was \$13.41 as of June 7, 2013 based on his \$27,990.00 annual salary.

OWCP, on January 31, 2018, again expanded acceptance of appellant's claim to include other synovitis and tenosynovitis, left hand; and radial styloid tenosynovitis (de Quervain).

By decision dated August 29, 2018, OWCP granted appellant an additional schedule award for five percent permanent impairment of the left upper extremity, totaling eight percent left upper extremity permanent impairment. The award ran for 15.6 weeks for the period July 11 through October 28, 2018. OWCP paid the schedule award at a weekly pay rate of \$581.15, with the effective pay rate date of June 7, 2013.

OWCP, by decision dated March 11, 2019, granted appellant an additional schedule award for 5 percent permanent impairment of the left upper extremity, totaling 13 percent left upper extremity permanent impairment. The award ran for 15.6 weeks for the period November 28, 2018 through February 2, 2019. OWCP paid the schedule award at a weekly pay rate of \$581.15, effective June 7, 2013.

By decision dated December 14, 2021, OWCP granted appellant an increased schedule award for 6 percent permanent impairment of the right upper extremity, totaling 13 percent right upper extremity permanent impairment. The period of the award ran for 18.72 weeks for the

period September 9, 2020 through January 18, 2021. OWCP paid the schedule award at a weekly pay rate of \$581.15 as of June 7, 2013.

On February 1, 2022 appellant requested reconsideration, contending that he was advised by OWCP on September 23 and October 13, 2021 that earnings from his non-federal employment at a janitorial service were similar to the former clerk duties he performed at the employing establishment, and, thus, these earnings would be included in his schedule award pay rate. He asserted that the \$581.15 pay rate used by OWCP was incorrect. Appellant concluded that his schedule award compensation should be corrected.

Appellant also submitted an August 10, 2021 letter in which he informed OWCP that his duties as the owner and operator of a janitorial services company correlated to his former work duties as a clerk at the employing establishment.

Additionally, appellant submitted CA-110 forms dated September 23, and October 13 and 27, 2021, indicating that OWCP informed him that his janitorial service duties were similar to his former clerk duties and, thus, earnings from this employment would be considered in determining his schedule award compensation pay rate. It also advised him that further development would be undertaken to determine the correct schedule award compensation pay rate and requested that he submit a W-2 Wage and Tax statement or other document indicating his actual earnings prior to and up to his accepted employment injury.

By decision dated March 9, 2022, OWCP denied modification of the December 14, 2021 decision. It noted that appellant was a full-time federal employee and found that pay rates based on full-time federal employment may not generally be expanded to include the pay earned in any other concurrent employment, even if that employment is similar to the federal duties.

On August 15, 2022 appellant filed a claim for compensation (Form CA-7) for an increased schedule award. He submitted a July 22, 2022 report from Dr. Thomas E. Martens, a physician specializing in family medicine.

In his report, Dr. Martens noted the accepted conditions of CTS, bilateral upper limb; other synovitis and tenosynovitis, left hand; radial styloid tenosynovitis (deQuervain); and trigger thumb, right thumb. He also noted appellant's OWCP authorized 2014 and 2017 (revision) bilateral carpal tunnel surgeries, 2018 de Quervain surgery, and 2014 right thumb trigger finger surgery. Dr. Martens provided his findings on physical examination, including normal range of motion (ROM) of both wrists. He opined that appellant had reached maximum medical improvement (MMI) on July 22, 2022, the date of his impairment evaluation. Dr. Martens determined that his accepted condition of left CTS fell under grade modifier 3 for functional history (GMFH) due to constant symptoms, grade modifier 3 for physical examination (GMPE) due to weakness, and grade modifier 1 for clinical studies (GMCS) due to conduction delay. He reported a *QuickDASH* score of 77 (severe). Dr. Martens found that appellant had six percent permanent impairment of the left upper extremity. He then found that his accepted condition of right CTS also fell under grade modifier 3 for GMFH due to constant symptoms, grade modifier 3 for GMPE due to weakness, and grade modifier 1 for GMCS due to conduction delay. Dr. Martens again reported a *QuickDASH* score of 77 (severe). He found that appellant had six percent permanent impairment of the right upper extremity. Dr. Martens further found

that appellant had six percent permanent impairment due to the accepted condition of right thumb trigger finger. He determined that he had 17 percent permanent impairment of the upper extremity which represented 10 percent permanent impairment of the whole person.

On September 22, 2022 OWCP routed Dr. Martens' July 22, 2022 report, a statement of accepted facts (SOAF), and the case record to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA), for review and determination regarding appellant's bilateral upper extremity permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>4</sup> and the date of MMI.

In his September 28, 2022 report, Dr. Harris reviewed the SOAF and medical evidence of record, including Dr. Martens' July 22, 2022 report. He found that MMI occurred on July 27, 2022, the date of Dr. Martens' impairment evaluation. The DMA utilized the diagnosis-based impairment (DBI) rating method of the sixth edition of the A.M.A., *Guides*. Under Table 15-23 on page 449, he assigned a grade modifier of 2 due to residual problems with moderate carpal tunnel symptoms status post carpal tunnel release, which represented six percent right upper extremity permanent impairment. The DMA noted that the ROM impairment rating method was not applicable to a CTS diagnosis. Utilizing Table 15-2 on page 392, he identified a class of diagnosis (CDX) of right thumb trigger finger, which represented a Class 1, grade C impairment, resulting in two percent right upper extremity permanent impairment. The DMA utilized the ROM impairment rating method and determined that appellant had zero percent permanent impairment of the right thumb because he had full ROM of the right hand. Utilizing the Combined Values Chart, he combined the wrist and finger impairments of six percent and two percent for a total of eight percent right upper extremity permanent impairment. The DMA concluded that appellant had eight percent permanent impairment of the right upper extremity because the DBI rating method yielded greater impairment than the ROM rating method. Regarding permanent impairment to the left upper extremity, the DMA again utilized Table 15-23 and identified a grade modifier of 2 due to residual problems with moderate carpal tunnel symptoms status post carpal tunnel release, which represented six percent permanent impairment of the left upper extremity. He also reiterated that the ROM rating was not applicable to a CTS diagnosis. The DMA explained the discrepancy between his two percent permanent impairment rating for appellant's right thumb trigger finger and Dr. Martens' six percent permanent impairment rating. He noted that Dr. Martens had not converted his right thumb permanent impairment rating to an upper extremity permanent impairment rating. The DMA indicated that appellant had been previously awarded a schedule award for 13 percent permanent impairment of each upper extremity and concluded that he had no increased bilateral upper extremity permanent impairment.

OWCP, by decision dated November 30, 2022, denied appellant's claim for an increased schedule award. It accorded the weight of the medical evidence to the opinion of the DMA, Dr. Harris.

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<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

On March 8, 2023 appellant requested reconsideration of the March 9, 2022 decision. In a March 7, 2023 letter, again contended that OWCP advised him that earnings from his janitorial services company would be included in his schedule award pay rate.

On May 4, 2023 OWCP expanded the acceptance of appellant's claim to include lesion of ulnar nerve, right and left upper limb.

By decision dated June 1, 2023, OWCP denied modification of the March 9, 2022 decision, again finding that as a full-time federal employee appellant was not entitled to a pay rate that included pay from similar employment.

On July 5, 2023 appellant filed a Form CA-7 for an additional schedule award. He submitted a May 15, 2023 report by Dr. Kyriakos Tsalamandris, Board-certified in emergency medicine.

In his June 12, 2023 report, Dr. Tsalamandris noted that he performed his impairment evaluation on May 15, 2023. He also noted the accepted conditions of lesion of ulnar nerve, right and left upper limbs. Dr. Tsalamandris opined that appellant had reached MMI on June 12, 2023. He utilized Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides* to reach his impairment ratings. Dr. Tsalamandris determined that appellant's condition of left ulnar nerve entrapment fell under a GMFH of 2 due to intermittent symptoms, a GMPE of 1 due to a normal examination, and a GMCS of 1 due to conduction delay. He found that appellant had three percent permanent impairment of the left upper extremity. Dr. Tsalamandris also determined that appellant's condition of right ulnar nerve entrapment fell under a GMFH of 2 due to intermittent symptoms, a GMPE of 1 due to a normal examination, and a GMCS of 1 due to conduction delay. He then utilized appellant's *QuickDASH* score of 79 to find a grade modifier functional scale of one. Dr. Tsalamandris found three percent permanent impairment of the right upper extremity.

On August 2, 2023 OWCP routed Dr. Tsalamandris' June 12, 2023 report, a SOAF, and the case record to DMA Dr. Harris for review and determination regarding appellant's bilateral upper extremity permanent impairment in accordance with the sixth edition of the A.M.A., *Guides* and the date of MMI.

In his August 7, 2023 report, Dr. Harris reviewed the SOAF and medical evidence of record, including Dr. Tsalamandris' June 12, 2023 report. He found that MMI occurred on May 15, 2023, the date of Dr. Tsalamandris' impairment evaluation. The DMA concurred with Dr. Tsalamandris' rating of three percent permanent impairment of each upper extremity.

OWCP, by decision dated August 25, 2023, denied appellant's claim for an additional schedule award, based on the opinions of his treating physician, Dr. Tsalamandris, and the DMA, Dr. Harris.

## **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provisions of FECA<sup>5</sup> and its implementing regulations<sup>6</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>7</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>8</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>9</sup>

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Impairment due to CTS is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.<sup>10</sup> In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories Test Findings, History, and Physical Findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.* See also *J.G.*, Docket No. 23-1132 (issued February 13, 2024); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>8</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>9</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>10</sup> A.M.A., *Guides* 449.

value may be modified up or down based on functional scale, an assessment of impact on daily living activities.<sup>11</sup>

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF): A Contemporary Model of Disablement*.<sup>12</sup> Under the sixth edition, the evaluator identifies the CDX, which is then adjusted by the GMFH, GMPE, and GMCS.<sup>13</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>14</sup> Evaluators are directed to provide reasons for their impairment rating, including the choice of diagnoses from regional grids and the calculation of the modifier score.<sup>15</sup>

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 impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>16</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish greater than 13 percent permanent impairment of each upper extremity, for which he previously received schedule award compensation.

Appellant submitted reports from Dr. Martens and Dr. Tsalamandris to support his claim for an increased schedule award. In his July 22, 2022 report, Dr. Martens opined that appellant had six percent permanent impairment of each upper extremity due to the accepted condition of bilateral CTS. He also opined that appellant had six percent permanent impairment due to the accepted condition of right thumb trigger finger. Dr. Martens concluded that he had 17 percent permanent impairment of the upper extremity which represented 10 percent permanent impairment of the whole person.

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<sup>11</sup> A survey completed by a given claimant, known by the name *QuickDASH*, may be used to determine the functional scale score. *Id.* at 448-49; *see also J.H.*, Docket No. 19-0395 (issued August 10, 2020).

<sup>12</sup> A.M.A., *Guides* 3, section 1.3(a).

<sup>13</sup> *Id.* at 493-556.

<sup>14</sup> *Id.* at 521.

<sup>15</sup> *M.C.*, Docket No. 20-1234 (issued January 27, 2022); *E.W.*, Docket No. 19-1720 (issued November 25, 2020); *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>16</sup> *See supra* note 8 at Chapter 2.808.6(f) (March 2017). *See also P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

In accordance with its procedures,<sup>17</sup> OWCP properly routed the case record to its DMA, Dr. Harris. In his September 28, 2022 report, Dr. Harris indicated that he had reviewed Dr. Martens' July 22, 2022 report. Under Table 15-23, page 449, of the sixth edition of the A.M.A., *Guides*, he found that appellant's DBI resulted in a grade modifier of 2 due to residual problems with moderate carpal tunnel symptoms status post carpal tunnel release, which represented six percent right upper extremity permanent impairment. The DMA noted that the ROM impairment rating method was not applicable to a CTS diagnosis. Utilizing Table 15-2, page 392, he identified that a CDX of right thumb trigger finger resulted in a Class 1 impairment, which represented two percent right upper extremity permanent impairment. The DMA utilized the ROM impairment rating method and determined that appellant had zero percent permanent impairment of the right thumb because he had full ROM of the right hand. He combined appellant's impairment ratings and concluded that appellant had eight percent permanent impairment of the right upper extremity. Regarding permanent impairment to the left upper extremity, the DMA again utilized Table 15-23 and identified a grade modifier of 2 due to residual problems with moderate carpal tunnel symptoms status post carpal tunnel release, which represented six percent permanent impairment of the left upper extremity. He also reiterated that the ROM rating was not applicable to a CTS diagnosis. The DMA explained that the discrepancy between his two percent permanent impairment rating for appellant's right thumb trigger finger and Dr. Martens' six percent permanent impairment rating was due to Dr. Martens' failure to convert his right thumb permanent impairment rating to an upper extremity permanent impairment rating. He noted that appellant had previously received a schedule award for 13 percent permanent impairment of each upper extremity. The DMA concluded that appellant had no additional bilateral upper extremity permanent impairment.

In his June 12, 2023 report, Dr. Tsalamandris opined that appellant had three percent permanent impairment of each upper extremity under the DBI rating methodology.

In his August 7, 2023 report, Dr. Harris indicated that he had reviewed Dr. Tsalamandris' June 12, 2023 report. He concurred with Dr. Tsalamandris' three percent permanent impairment of each upper extremity under the DBI rating methodology for the accepted ulnar nerve lesions.

Dr. Harris found that appellant had eight percent permanent impairment of the right upper extremity due to CTS and right trigger finger, and six percent permanent impairment of the left upper extremity due to CTS, and he concurred in the rating of appellant's bilateral ulnar lesions at three percent. The Board finds that pursuant to the Combined Values Chart appellant's combined right upper extremity permanent impairment rating is 11 percent, and his left upper extremity combined rating is nine percent. The Board therefore finds that OWCP properly determined that appellant has not established greater than 13 percent permanent impairment of each upper extremity based on the clinical findings and reports of Dr. Martens and

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<sup>17</sup> *Id.*

Dr. Tsalamandris.<sup>18</sup> There is no probative medical evidence of record demonstrating greater impairment than that previously awarded.<sup>19</sup>

Appellant may request a schedule award or increased schedule award at any time based on evidence of new exposure, or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8107 of FECA provides that schedule award compensation for permanent impairment of a scheduled member shall be based on the employee's monthly pay.<sup>20</sup> Such compensation is to be based on the pay rate as determined under section 8101(4) which defines monthly pay as "[t]he monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater."<sup>21</sup>

The Board has held that where an injury is sustained over a period of time the date of injury is the date of last exposure to those work factors causing injury.<sup>22</sup> Applying this principle to schedule award claims, the Board has held that the date of injury is the date of the last exposure which adversely affects the impairment because every exposure which has an adverse effect (an aggravation) constitutes an injury.<sup>23</sup> In a case where a claimant continues to be exposed to injurious work factors and the medical evidence documents continued worsening of the claimed condition, OWCP selects the date of last exposure to injurious work factors as the date of injury.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

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

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<sup>18</sup> See *C.F.*, Docket No. 22-1271 (issued November 21, 2023); *J.L.*, Docket No. 22-1299 (issued May 17, 2023); *P.S.*, Docket No. 22-1051 (issued May 4, 2023); *N.M.*, Docket No. 19-1925 (issued June 3, 2020).

<sup>19</sup> See *C.F.*, *id.*; *P.S.*, *id.*; *M.H.*, Docket No. 20-1109 (issued September 27, 2021); *R.H.*, Docket No. 20-1472 (issued March 15, 2021); *L.D.*, Docket No. 19-0495 (issued February 5, 2020).

<sup>20</sup> 5 U.S.C. § 8107(a).

<sup>21</sup> *Id.* at § 8101(4).

<sup>22</sup> See *D.A.*, Docket No. 18-1105 (issued January 10, 2019); *J.S.*, Docket No. 17-1277 (issued April 20, 2018); *Sherron A. Roberts*, 47 ECAB 617 (1996).

<sup>23</sup> See *N.P.*, Docket No. 23-0258 (issued August 11, 2023); *Barbara A. Dunnivant*, 48 ECAB 517 (1997).

<sup>24</sup> See *G.L.*, Docket No. 12-1795 (issued September 24, 2013).

As noted, where an injury is sustained over a period of time, as in this case, the date of injury is generally the date of last exposure to the employment factors causing the injury.<sup>25</sup> The employing establishment informed OWCP that appellant was last exposed on May 15, 2013 to the conditions identified as resulting in his injuries. In its schedule award decision dated June 7, 2016, OWCP based his schedule award compensation on an effective pay rate date of May 15, 2013, based on an annual salary of \$27,990.00 which yielded a weekly compensation rate of \$537.27. However, the employing establishment also indicated that appellant's employment was terminated on June 7, 2013. OWCP utilized the effective pay rate date, based on the date appellant's employment was terminated, June 7, 2013, in its schedule award decisions dated September 14, 2017, August 29, 2018, March 11, 2019, and December 14, 2021, again indicating an annual salary of \$27,990.00. In these calculations, OWCP determined that appellant's weekly payrate as of June 7, 2013 was \$581.15, not \$537.27. As OWCP based appellant's schedule award compensation on two different pay rates, the Board is unable to determine whether he received the appropriate pay rate for the purposes of his schedule award compensation.

Regarding appellant's continuing allegation that he is entitled to have his concurrent similar private earnings incorporated in his payrate, the Board finds that OWCP properly found that appellant's concurrent employment would only be considered to determine whether appellant was entitled to a full-time annual pay rate. OWCP explained that as appellant was a full-time federal employee, with a fixed annual salary, pay rates based on full-time federal employment may not generally be expanded to include the pay earned in any other concurrent employment, even if that employment is similar to the federal duties.<sup>26</sup> In this regard, OWCP's procedures also provide that: "Concurrent employment can be included in determinations made under 5 U.S.C. § 8114(d)(1) to the extent that it establishes the ability to work full time."<sup>27</sup>

OWCP therefore properly utilized appellant's fixed full-time pay rate of \$27,990.00 in determining his weekly pay rate for purposes of his schedule award compensation.

The Board will therefore remand the case for OWCP for further findings regarding appellant's pay rate for schedule award compensation to explain the discrepancy between the weekly pay rates of \$537.27 and \$581.15. On remand OWCP should request the appropriate pay rate information from the employing establishment and OWCP shall thereafter determine whether all of appellant's schedule award determinations should be paid at the same pay rate. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's pay rate for his schedule award compensation.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish greater than 13 percent permanent impairment of each upper extremity, for which he previously received

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<sup>25</sup> See *D.A.*, *supra* note 22; *D.D.*, Docket No. 15-0193 (issued May 11, 2015).

<sup>26</sup> See *J.G.*, Docket No. 05-943 (issued May 23, 2007).

<sup>27</sup> See *supra* note 8 at Chapter 2.900.4.(d)(3) (September 2020).

schedule award compensation. The Board further finds that the case is not in posture for decision regarding the proper pay rate for his schedule award compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2023 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. The August 25, 2023 decision is affirmed.

Issued: March 26, 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