United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 25-0325**
	)	**Issued: April 3, 2025**
U.S. POSTAL SERVICE, NORTH METRO PROCESSING & DISTRIBUTION CENTER, Duluth, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 20, 2025 appellant, through counsel, filed a timely appeal from a January 24, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

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

FACTUAL HISTORY

On February 20, 2020 appellant, then a 55-year-old postal support employee (PSE) clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2020 she injured her left arm when a letter tray full of commercial mail fell off an all-purpose container (APC) and landed on her left forearm while in the performance of duty. OWCP assigned the present claim OWCP File No. xxxxxx601 and on April 2, 2020 accepted it for left forearm contusion and left forearm strain.[3] On November 25, 2020 OWCP expanded the acceptance of the claim to include a tear of the distal tendon of the biceps brachii. It paid appellant wage-loss compensation for total disability on the supplemental rolls effective March 31, 2020, and on the periodic rolls effective August 16, 2020. Appellant underwent an OWCP-authorized left distal biceps tendon repair with a unicortical biceps button on September 23, 2020. She returned to full-time modified duty on May 19, 2022.

On August 5, 2022 appellant stopped work due to the accepted employment injury.

On March 10, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In an August 3, 2022 report, Dr. Scott Gillogly, a Board-certified orthopedic surgeon, reported his evaluation findings and opined that appellant's biceps tendon repair had reached maximum medical improvement (MMI). However, he noted that she had not reached MMI for her left upper extremity CRPS. Based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] Dr. Gillogly opined that appellant had 11 percent permanent impairment of the left upper extremity.

On June 16, 2023 OWCP referred the record and a March 30, 2021 statement of accepted facts (SOAF) to Dr. Morley Slutsky, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for a review of the medical record and an opinion regarding permanent impairment.

[3] Appellant has a previously accepted occupational disease claim (Form CA-2) under OWCP File No. xxxxxx367, accepted for aggravation of upper left limb complex regional pain syndrome (CRPS) and a left arm distal biceps tear for which it paid wage-loss compensation on the periodic rolls effective August 6, 2022. She subsequently filed another Form CA-2 under OWCP File No. xxxxxx482 alleging that she developed right carpal tunnel syndrome due to factors of her federal employment, which OWCP denied.

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

In his June 21, 2023 report, Dr. Slutsky found that Dr. Gillogly failed to justify his impairment calculations. He applied the sixth edition of the A.M.A., *Guides*[5] and found that, under the diagnosis-based impairment (DBI) method, appellant had a combined left upper extremity permanent impairment of 8 percent, which consisted of 6 percent impairment of the elbow and 2 percent impairment of the upper extremity peripheral nerve, sensory only. Dr. Slutsky found that appellant reached MMI on August 3, 2022.

By decision dated August 8, 2023, OWCP granted appellant a schedule award for eight percent permanent impairment of the left upper extremity (elbow). The award was for 24.96 weeks or 174.72 days.

On August 15, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. After a preliminary review, by decision dated October 10, 2023, OWCP's hearing representative set aside the August 8, 2023 decision and remanded the case for further development of the record. The hearing representative directed OWCP to administratively combine the instant claim with OWCP File Nos. xxxxxx367 and xxxxxx482, update the SOAF, and provide a copy of Dr. Slutsky's report to Dr. Gillogly for review and comment within 30 days.[6] If no response was received from Dr. Gillogly within 30 days, OWCP was to refer appellant for a second opinion examination to assess whether appellant had a permanent impairment of her left upper extremity.

In a June 28, 2023 report, Dr. Ralph D'Auria, a Board-certified physiatrist, performed a comprehensive evaluation and indicated that appellant was at MMI. He utilized Table 15-4 of the A.M.A., *Guides* and applied the DBI impairment rating method to determine that appellant had 7 percent permanent impairment of the left upper extremity. Dr. D'Auria determined that appellant's distal biceps tendon rupture was a Class 1 impairment with a default value of five percent. He assigned a grade modifier for functional history *(*GMFH) of 2; a grade modifier for physical examination *(*GMPE) of 1; and a grade modifier for clinical studies *(*GMCS) of 2. Dr. D'Auria utilized the net adjustment formula, which resulted in 2 percent impairment or grade E, for a rating of 7 percent permanent impairment. Regarding the alternative range of motion (ROM) impairment rating method, he indicated that under Table 15-33, supination 60 degrees equaled 1 percent impairment and pronation 70 degrees equaled 1 percent impairment for a total left upper extremity impairment of 2 percent. Dr. D'Auria indicated that under Table 15-35, Range of Motion Grade Modifiers, appellant had grade modifier 1 for the elbow and under Table 15-7 the GMFH was 2. As appellant had a difference of 1 between the two grade modifiers, under Table 15-36, Functional History Grade Adjustment: Range of Motion, he multiplied the total ROM impairment of 2 by 5 percent for a total of 2.1 percent, which rounded down to 2 percent impairment. Dr. D'Auria explained that as the DBI method produced the higher impairment rating, appellant had a total of seven percent permanent impairment of the left upper extremity.

On December 14, 2023 OWCP routed Dr. D'Auria's June 28, 2023 report, along with the case record, and the March 30, 2021 SOAF to Dr. Arthur S. Harris, a Board-certified orthopedic

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

[6] These files have been administratively combined by OWCP, with OWCP File No. xxxxx601 serving as the master file.

surgeon serving as the district medical adviser (DMA), for his review and rating of appellant's permanent impairment under the A.M.A., *Guides*.

In a December 23, 2023 report, Dr. Harris discussed the findings in Dr. D'Auria's June 28, 2023 report and concurred with Dr. D'Auria that a distal biceps tendon rupture warranted a DBI rating of seven percent under Table 15-4. He also considered the alterative ROM method, which was two percent impairment comprised of one percent impairment for loss of pronation and one percent impairment for loss of supination. Dr. Harris confirmed that the more favorable seven percent impairment rating under the DBI method should be applied. He also indicated that MMI was reached on June 28, 2023, the date of Dr. D'Auria's evaluation.

By decision dated January 30, 2024, OWCP granted appellant a schedule award which ran for 21.84 weeks from December 7, 2023 through May 7, 2024. It noted the award was based on the June 28, 2023 opinion of Dr. D'Auria and the January 16, 2024 report of the DMA.

On February 1, 2024 OWCP reissued its January 30, 2024 decision, noting that the DMA, Dr. Harris, had agreed with Dr. D'Auria's seven percent left upper extremity impairment rating.

On February 13, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated March 19, 2024, OWCP's hearing representative vacated the January 30, 2024 decision, and remanded the case for additional medical development as the schedule award claim had not been fully developed. OWCP's hearing representative directed OWCP to update the SOAF and have the DMA review the entire medical record, including the reports of the prior DMA, who had offered a sensory impairment, and to compare it to the impairment rating established by Dr. D'Auria's report, followed by the issuance of a *de novo* decision.

On April 3, May 2, and June 26, 2024 OWCP requested clarification from Dr. Harris, the DMA, regarding his December 23, 2023 impairment report of appellant's left upper extremity. It included copies of its April 1 and 2, 2024 updated SOAFs, and issued instructions to Dr. Harris, including whether the entitlement to a sensory deficit was appropriate as noted in Dr. Slutsky's DMA report dated June 21, 2023.

In a July 2, 2024 addendum report, Dr. Harris acknowledged receipt of Dr. Slutsky's June 21, 2023 DMA report and the updated SOAFs. He indicated that appellant's condition had improved from Dr. Gillogly's August 3, 2022 impairment assessment to Dr. D'Auria's June 28, 2023 impairment assessment, noting that Dr. D'Auria found no neurologic deficit or diminished sensation in the lateral antebrachial cutaneous nerve and that she had 70 degrees of pronation and 60 degrees supination of left elbow motion. Dr. Harris found that appellant reached MMI as of Dr. D'Auria's June 28, 2023 examination, and opined that appellant had seven percent permanent impairment of the left upper extremity. Using the DBI rating method, he determined that under Table 15-4, appellant had seven percent upper extremity impairment for biceps tendon rupture. Dr. Harris further opined that under the ROM rating method Table 15-33, appellant had two percent upper extremity impairment comprised of one percent impairment for loss of pronation and one percent impairment for loss of supination. He noted that the DBI method resulted in

greater impairment, and the A.M.A., *Guides* directs that the higher impairment rating must be used. Dr. Harris further noted that Dr. D'Auria found appellant had seven percent left upper extremity based on the DBI method and, when he reviewed the case file on December 23, 2023, he also found that appellant had seven percent left upper extremity impairment based on the more recent evaluation of Dr. D'Auria, dated June 28, 2023.

By *de novo* decision dated July 24, 2024, OWCP granted appellant a schedule award for seven percent permanent impairment of the left upper extremity (arm). The period of the award ran for 21.84 weeks from December 7, 2023 through February 24, 2024.

On July 30, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 15, 2024.

By decision dated January 24, 2025, the hearing representative affirmed the July 24, 2024 schedule award decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] and its implementing regulations[8] 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 of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[9] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[10]

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.[11] OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this

[7] *Supra* note 2.

[8] 20 C.F.R. § 10.404.

[9] *Id.*; *see E.A.*, Docket No. 25-0036 (issued November 13, 2024); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[11] *E.A.*, *supra* note 9; *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.[12]

In addressing impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated.[13] After a CDX is determined (including identification of a default grade value), the impairment class is then adjusted by grade modifiers based on GMFH, GMPE, and/or GMCS.[14] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[15] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[16]

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.[17] Regarding the application of ROM or DBI 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)."[18]

The FECA Bulletin further advises:

> "Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify: (1) the methodology used by the rating physician (*i.e.*, DBI or ROM); and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A., Guides] allow for the use of both the DBI and ROM methods to calculate an*

[12] *Supra* note 10 at Chapter 2.808.5 (March 2017).

[13] *E.A., supra* note 9; *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

[14] A.M.A., *Guides* 383-492; *see M.P.*, Docket No. 13-2087 (issued April 8, 2014).

[15] *Id.* at 405-12. Table 15-4 and Table 15-5 also provide that, if motion loss is present for a claimant with certain diagnosed elbow and shoulder conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such a ROM rating stands alone and is not combined with a DBI rating. *Id.* at 398-05, 475-78.

[16] *Id.* at 23-28.

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

[18] *Id.*; *V.L.*, Docket No. 18-0760 (issued November 13, 2018).

impairment rating for the diagnosis in question, the method producing the higher rating should be used."[19] (Emphasis in the original.)

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[20]

ANALYSIS

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

In his June 28, 2023 report, Dr. D'Auria indicated that appellant was at MMI. He opined that appellant had seven percent impairment of the left upper extremity under the DBI method. Dr. D'Auria found that under Table 15-4, appellant's distal biceps tendon rupture was a Class 1 impairment with default value of five percent. He assigned a GMFH of 2; a GMPE of 1; and a GMCS of 2. Dr. D'Auria utilized the net adjustment formula and found a final grade E or 7 percent left upper extremity impairment. He also applied the ROM rating method and found under Table 15-33, supination 60 degrees equaled 1 percent impairment and pronation 70 degrees equaled 1 percent impairment for 2 percent total left upper extremity impairment. Dr. D'Auria further noted that under Table 15-35, Range of Motion Grade Modifiers, appellant had grade modifier 1 for the elbow and under Table 15-7 the GMFH was 2. Under Table 15-36, Functional History Grade Adjustment: Range of Motion, as appellant had a difference of 1 between the two grade modifiers, he multiplied the total ROM impairment of 2 by 5 percent for a total of 2.1 percent, which rounded down to 2 percent impairment. He related that as the DBI method produced the higher impairment rating, appellant had seven percent permanent impairment of the left upper extremity.

In his December 23, 2023 report, Dr. Harris concurred with Dr. D'Auria's June 28, 2023 findings that a distal biceps tendon rupture warranted a DBI rating of seven percent under Table 15-4. He also indicated that appellant had two percent impairment under the ROM alternative method. Dr. Harris confirmed that the more favorable seven percent impairment under the DBI method should be applied. He also indicated that MMI was reached on June 28, 2023, the date of Dr. D'Auria's evaluation.

In his July 2, 2024 addendum report, Dr. Harris reviewed the April 1 and 2, 2024 updated SOAFs and the medical evidence of file, including Dr. Slutsky's June 21, 2023 report and Dr. Gillogly's August 3, 2022 impairment report. After a comprehensive review of the case, he indicated that appellant's condition had improved from Dr. Gillogly's August 3, 2022 impairment assessment to Dr. D'Auria's June 28, 2023 impairment assessment, noting that Dr. D'Auria found no neurologic deficit or diminished sensation in the lateral antebrachial cutaneous nerve and that

[19] *Id.*

[20] *See supra* note 10 at Chapter 2.808.6f (March 2017); *see also J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

she had 70 degrees of pronation and 60 degrees supination of left elbow motion. Dr. Harris thus found the date of MMI remained June 28, 2023, the date of Dr. D'Auria's examination. He also related that Dr. D'Auria found appellant had seven percent left upper extremity based on the DBI method and, when he reviewed the case file on December 23, 2024, he also found seven percent left upper extremity impairment based on the DBI method. Dr. Harris further related that under the ROM method appellant had two percent upper extremity impairment. He indicated that the A.M.A., *Guides* direct that the higher impairment rating must be used, and that the DBI method resulted in the greater impairment.

The Board finds that Dr. Harris' December 23, 2023 and July 2, 2024 reports are well rationalized and entitled to the weight of the medical evidence.[21] As there is no rationalized medical report of record providing a rating of permanent impairment greater than the seven percent permanent impairment of the left upper extremity previously awarded, the Board finds that appellant 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 seven percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

[21] *See D.D.*, Docket No. 24-0890 (issued October 21, 2024); *Y.S.*, Docket No. 19-0218 (issued May 15, 2020); *R.D.*, Docket No. 17-0334 (issued June 19, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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