United States Department of Labor
Employees' Compensation Appeals Board

E.G., Appellant	)	
and	)	**Docket No. 25-0383**
	)	**Issued: April 18, 2025**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. BORDER PATROL, Newark, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 12, 2025 appellant filed a timely appeal from a January 14, 2025 merit decision and a March 10, 2025 nonmerit decision 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 over the merits of this case.

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). Appellant contended that he did not believe OWCP properly developed the medical evidence as he had greater permanent impairment than awarded. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter pertains to an evaluation of the weight of the medical evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. The oral argument request is therefore denied, and this decision is based on the case record as submitted to the Board.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish greater than three percent permanent impairment of his left upper extremity, for which he previously received a schedule award; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 9, 2016 appellant, then a 39-year-old customs officer, filed a traumatic injury claim (Form CA-1) alleging that on November 8, 2016 he injured his left shoulder lifting a heavy box of frozen fish while in the performance of duty. He did not stop work. OWCP accepted the claim for joint derangement of the left shoulder and left shoulder labral tear.

On December 18, 2019 appellant underwent an OWCP-authorized left shoulder arthroscopic rotator cuff and labral debridement, subacromial decompression, lysis of adhesions, and biceps tenodesis.

In a December 1, 2022 report, Dr. Alexander Tejani, a Board-certified orthopedic surgeon, diagnosed left shoulder pain and tendinitis and found that appellant had reached maximum medical improvement (MMI). He examined his left shoulder and found that based on a single measurement he had forward flexion of 175 degrees, external rotation of 40 degrees, abduction of 130 degrees, and internal rotation to L5. Dr. Tejani related 4/5 muscle strength in scapular abduction, external rotation, and internal rotation. He determined that appellant had 30 percent permanent impairment of his left upper extremity in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*).[3]

On January 11, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On June 22, 2023 OWCP referred Dr. Tejani's December 1, 2022 report and a statement of accepted facts (SOAF) to Dr. James W. Butler, a physician Board-certified in occupational medicine serving as OWCP's district medical adviser (DMA), for review and an opinion regarding appellant's permanent impairment. In his July 1, 2023 report, the DMA found that Dr. Tejani did not provide sufficient findings to support his impairment rating in accordance with the A.M.A., *Guides* noting that he had not provided findings or performed three validated range of motion measurements and that therefore the range of motion (ROM) rating method could not be applied.

In an August 3, 2023 report, Dr. Tejani opined that appellant had reached MMI. He listed the surgical procedures and related forward flexion of 175 degrees, external rotation of 40 degrees, abduction of 130 degrees, and internal rotation to L5. Dr. Tejani found 4/5 strength in scapular abduction, external rotation, and internal rotation. He again opined that he had 30 percent permanent impairment of the left shoulder in accordance with the A.M.A., *Guides.*

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

On October 25, 2023 OWCP referred appellant, the case record, and a SOAF to Dr. Frank Corrigan, a Board-certified orthopedic surgeon, for a second opinion examination regarding his left shoulder. In a report dated December 5, 2023, Dr. Corrigan diagnosed left shoulder joint derangement and left shoulder labral tear. He performed three range of motion tests and found that appellant's left shoulder demonstrated 130 degrees of abduction, 45 degrees of adduction, 150 degrees of forward flexion, 45 degrees of extension, 90 degrees of external rotation, and 60 degrees of internal rotation with normal strength. Dr. Corrigan also provided three range of motion tests for the unaffected right shoulder and found 150 degrees of abduction, 45 degrees of adduction, 180 degrees of forward flexion, 60 degrees of extension, and 90 degrees of external rotation. He found that appellant had nine percent permanent impairment of the left upper extremity using the ROM rating method of his left shoulder using Table 15-34 of page 475 of the A.M.A., *Guides*. Dr. Corrigan further determined that appellant's range of motion tests for the unaffected right upper extremity were normal. He related that Table 15-5 page 404 of the A.M.A., *Guides* provided that labral lesions should be evaluated in accordance with the ROM rating method if range of motion was not normal and did not provide a diagnosis-based impairment (DBI) rating.

On January 9, 2024 OWCP referred Dr. Corrigan's report to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as DMA. In his January 17, 2024 report, the DMA applied ROM rating method of Table 15-34, page 475 of the A.M.A., *Guides*, and reached eight percent permanent impairment of the left upper extremity. He disagreed with Dr. Corrigan's finding of one percent impairment due to 45 degrees of extension, which is the rating applied to 30 to 40 degrees of extension, in accordance with page 461 of the A.M.A., *Guides* and Table 15-34, page 475. The DMA related that there was no documentation of any injury to appellant's right shoulder and advised that, pursuant to the A.M.A., *Guides*, page 461, section 15.7a, clinical measurements of motion, "If the opposite extremity is neither involved nor previously injured, it must be used to define normal for that individual; any losses should be made in comparison to the opposite normal extremity." He applied the ROM rating method to the unaffected right upper extremity and determined that it demonstrated 5 percent loss of range of motion for a "baseline," due to 150 degrees of abduction, rather than 170 degrees as provided as non-ratable by the A.M.A., *Guides*, and 70 degrees of internal rotation rather than 80 degrees as provided as non-ratable by the A.M.A., *Guides*. The DMA noted that pursuant to the A.M.A., *Guides*, page 461, appellant's uninvolved right upper extremity ROM impairment of five percent should be subtracted from the injured left upper extremity ROM impairment of eight percent to determine the final left upper extremity impairment of three percent permanent impairment. He further utilized Table 15-5 (Shoulder Regional Grid), page 404 of the sixth edition of the A.M.A., *Guides*, and applied the DBI rating method. The DMA determined that appellant's left shoulder labral injury fell under a class of diagnosis (CDX) of a Class 1 impairment with a default value of three percent. He assigned a grade modifier for functional history (GMFH) of 1; a grade modifier for physical examination (GMPE) of 1; and a grade modifier for clinical studies (GMCS) of 1. The DMA utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), which resulted in a grade C, or three percent permanent impairment of the left upper extremity.

On January 25, 2024 OWCP requested a supplemental report from Dr. Corrigan. In a March 4, 2024 report, Dr. Corrigan concurred with the DMA's findings.

By decision dated March 19, 2024, OWCP granted appellant a schedule award for three percent impairment of the left upper extremity. The period of the award ran for 9.36 weeks for the period December 5, 2023 through February 8, 2024.

On March 25, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated May 30, 2024, OWCP's hearing representative vacated the March 19, 2024 decision. The hearing representative remanded the case for OWCP to undertake additional development of the medical evidence.

OWCP requested a supplemental examination and report from Dr. Corrigan. In an August 6, 2024 report, Dr. Corrigan performed three range of motion tests and found that appellant's left shoulder demonstrated a decrease to 90 degrees of abduction, three percent permanent impairment in accordance with the A.M.A., *Guides*, 45 degrees of adduction, no impairment, 90 degrees of forward flexion, three percent permanent impairment, 45 degrees of extension, no impairment, 90 degrees of external rotation, no impairment and 60 degrees of internal rotation, two percent permanent impairment in accordance with the A.M.A., *Guides*. He also provided three range of motion tests for the unaffected right shoulder to define normal for appellant and related 150 degrees of abduction, three percent permanent impairment, 45 degrees of adduction, 180 degrees of forward flexion, 60 degrees of extension, 90 degrees of external rotation and 70 degrees of internal rotation, two percent permanent impairment. Dr. Corrigan agreed with Dr. Katz' application of the ROM rating method and found three percent permanent impairment of the left upper extremity. However, he again noted that Table 15-5 provides that the class one impairment for labral lesions, included only those lesions with normal motion. Dr. Corrigan asserted that as appellant did not have normal motion, the ROM rating method was the appropriate methodology rather than the DBI rating method. He noted that this distinction was moot as both the ROM and DBI rating methods resulted in three percent permanent impairment of the left upper extremity.

On September 6, 2024 OWCP referred Dr. Corrigan's August 6, 2024 report to Dr. Katz serving as the DMA. In his September 13, 2024 report, the DMA concurred with the findings of Dr. Corrigan.

By *de novo* decision dated January 14, 2025, OWCP denied appellant's claim for an additional schedule award, finding that the medical evidence of record was insufficient to establish greater than the three precent permanent impairment of the left upper extremity previously awarded. The weight of the medical evidence was accorded to Dr. Corrigan, the second opinion physician, and Dr. Katz, the DMA.

On October 1, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated November 27, 2024, an OWCP hearing representative vacated the January 14, 2025 decision. The hearing representative remanded the case for OWCP to undertake additional development of the medical evidence including consideration of Dr. Tejani's impairment rating.

By *de novo* decision dated January 14, 2025, OWCP denied appellant's claim for an additional schedule award, finding that the medical evidence of record was insufficient to

establish greater than the three percent permanent impairment of the left upper extremity previously awarded.

On February 25, 2025 appellant requested reconsideration. No additional argument or evidence was received.

By decision dated March 10, 2025, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA,[4] and its implementing federal regulations,[5] 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

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.[8] 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.)[9]

In determining 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. With respect to the shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the CDX is determined from the appropriate regional grid (including identification of a default grade value), the net adjustment formula is applied using a GMFH, GMPE, and/or

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.*

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

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

[9] *Id.*

GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10] 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.[11]

The A.M.A., *Guides* also provide that the ROM impairment method 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.[12] 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.[13] 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.[14]

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)."[15]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an 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.[16]

ANALYSIS -- ISSUE 1

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

[10] *See* A.M.A., *Guides* (6th ed. 2009) 405-12. Table 15-4 also provides that, if motion loss is present for a claimant with certain diagnosed 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 405, 459-477.

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

[12] *Id*. at 461.

[13] *Id*. at 473.

[14] *Id*. at 474.

[15] *Supra* note 8.

[16] *See supra* note 7 at Chapter 2.808.6f (March 2017). *See also B.C.*, Docket No. 21-0702 (issued March 25, 2022); *D.L.*, Docket No. 20-1016 (issued December 8, 2020); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

Dr. Tejani provided reports dated December 1, 2022 and August 3, 2023 listing physical findings including one measurement of forward flexion of 175 degrees, external rotation of 40 degrees, abduction of 130 degrees, and internal rotation to L5. He found 4/5 strength in scapular abduction, external rotation, and internal rotation. Dr. Tejani opined that he had 30 percent permanent impairment of the left shoulder in accordance with the A.M.A., *Guides.* OWCP's DMA found that Dr. Tejani had not provided physical findings in support of his 30 percent permanent impairment rating in accordance with the A.M.A., *Guides*.

OWCP referred appellant to Dr. Corrigan for a second opinion evaluation. In his August 6, 2024 report, Dr. Corrigan performed three range of motion tests and found that appellant's left shoulder demonstrated 90 degrees of abduction, three percent permanent impairment, 45 degrees of adduction, no impairment, 90 degrees of forward flexion, three percent permanent impairment, 45 degrees of extension, no impairment, 90 degrees of external rotation, no impairment, and 60 degrees of internal rotation, two percent permanent impairment totaling eight percent permanent impairment of the left shoulder in accordance with the A.M.A., *Guides*. He also provided three range of motion tests for the unaffected right shoulder and found 150 degrees of abduction, three percent permanent impairment, 45 degrees of adduction, no impairment, 180 degrees of forward flexion, no impairment, 60 degrees of extension, no impairment, 90 degrees of external rotation, no impairment, and 70 degrees of internal rotation, no impairment. Dr. Corrigan reduced the eight percent permanent impairment of the left upper extremity by appellant's normal ROM on five percent impairment to find three percent permanent impairment of the left upper extremity in accordance with the ROM rating method. On September 13, 2024 the DMA concurred with the findings of Dr. Corrigan.

The Board finds that the weight of the medical evidence is represented by Dr. Corrigan, OWCP's second opinion physician, who opined that appellant had no greater left upper extremity permanent impairment than the three percent previously awarded. As there is no other medical evidence of record in conformance with the sixth edition of the A.M.A., *Guides* showing greater than the three percent permanent impairment of the left upper extremity previously awarded, the Board finds that appellant has not met his burden of proof.[17]

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 -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.[18]

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

[17] *See T.F.*, Docket No. 24-0602 (issued September 11, 2024).

[18] 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[19]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[20] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[21] If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[22]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On February 25, 2025 appellant requested reconsideration of the merits of his schedule award claim.[23] However, he did not establish that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant did not submit any relevant and pertinent new medical evidence. Therefore, he is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than three percent permanent impairment of the left upper extremity, for which he previously received a schedule award. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

[19] 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

[20] 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id*. at Chapter 2.1602.4b.

[21] *Id*. at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

[22] *Id*. at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

[23] *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

ORDER

IT IS HEREBY ORDERED THAT the January 14 and March 10, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 18, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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