United States Department of Labor
Employees' Compensation Appeals Board

L.A., Appellant	)	
and	)	**Docket No. 25-0312**
	)	**Issued: August 4, 2025**
U.S. POSTAL SERVICE, HARTFORD PROCESSING & DISTRIBUTION CENTER, Hartford, CT, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 3, 2025 appellant filed a timely appeal from two December 31, 2024 merit decisions and a January 14, 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.[3]

[1] The Board notes that, during the pendency of this appeal, OWCP issued a February 7, 2025, decision, which denied appellant's request for reconsideration of the December 31, 2024 schedule award decision. The Board concludes that OWCP's February 7, 2025 decision is null and void as the Board and OWCP may not simultaneously exercise jurisdiction over the same underlying issue in a case on appeal. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see A.B.,* Docket No. 21-1170 (issued August 28, 2023); *J.W.,* Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.,* Docket No. 19-0981, n.2 (issued December 30, 2019); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the issuance of the January 14, 2025 decision, appellant submitted new 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work on July 18 and September 20, 2024, causally related to her accepted employment injury; (2) whether appellant has met her burden of proof to establish greater than 19 percent permanent impairment of her right upper extremity, for which she previously received a schedule award; and (3) whether OWCP properly denied appellant's request for reconsideration of the merits of her schedule award claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 17, 2006 appellant, then a 46-year-old custodian, filed an occupational disease claim (Form CA-2) alleging that she injured her right arm due to factors of her federal employment including constant mopping and lifting objects with her right hand. She stopped work on January 19, 2006 and returned to work on January 31, 2006. OWCP accepted appellant's claim for sprain of the right rotator cuff capsule and right elbow lateral epicondylitis. It paid her intermittent wage-loss compensation on the supplemental rolls from March 18, 2006 through September 19, 2007 and again as of June 29, 2009.

On September 28, 2006 appellant underwent right elbow lateral release. On December 26, 2006 she underwent right shoulder arthroscopic superior labral anterior posterior lesion (SLAP) repair and subacromial decompression. On January 19, 2009 appellant underwent left wrist excision of dorsal ganglion. On November 16, 2021 she underwent right shoulder arthroscopy, rotator cuff debridement, and subacromial decompression.

OWCP received a January 3, 2008 medical report, wherein Dr. George L. Cohen, a Board-certified internist serving as an OWCP medical adviser (DMA), found, based on the findings of appellant's treating Board-certified orthopedic surgeons, that appellant had 19 percent permanent impairment of the right upper extremity in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[4] Dr. Cohen related that appellant had 16 percent permanent impairment of the right shoulder, and 3 percent permanent impairment of the right elbow, and that maximum medical improvement (MMI) was reached on October 1, 2007, the date of appellant's last impairment evaluation.

By decision dated March 18, 2008, OWCP granted appellant a schedule award for 19 percent permanent impairment of the right upper extremity. The period of the award ran for 49.92 weeks from October 1, 2007 through February 16, 2008.

In a report dated July 17, 2017, Dr. Michael A. Miranda, a Board-certified orthopedic surgeon, related that appellant was seen for a one-time evaluation of her right shoulder. He noted that appellant had been found to be at MMI on October 1, 2007 and was found to have a 16 percent permanent impairment of the right shoulder. Dr. Miranda noted appellant's current pain complaints and her physical examination findings. Evaluation of appellant's right shoulder revealed supple forward flexion, abduction, internal and external rotation. Dr. Miranda noted that appellant had persistent weakness in her rotator cuff, but 5/5 strength in her supra and

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

infraspinatus, with 5/5 strength in her biceps, triceps, brachioradialis, forearm, wrist and hand, with normal ROM of the elbow and wrist, with intact sensation.

In a November 17, 2022 progress note, Dr. Brett Wasserlauf, an attending Board-certified orthopedic surgeon, discussed appellant's physical examination findings and diagnosed chronic right shoulder pain and status post arthroscopy right shoulder. Utilizing the range of motion (ROM) rating method of the sixth edition of the A.M.A., *Guides*,[5] he opined that under Table 15-34, page 475, appellant had 10 percent permanent impairment of the right upper extremity due to persistent ROM limitation.

On December 9, 2022 appellant filed a claim for compensation (Form CA-7) for an increased schedule award.

In a letter dated December 15, 2022, OWCP requested that Dr. Wasserlauf submit a permanent impairment evaluation addressing whether appellant had reached MMI and provide an impairment rating using the sixth edition of the A.M.A., *Guides*. It afforded him 30 days to submit additional medical evidence in support of appellant's schedule award claim. No response was received.

By decision dated January 24, 2023, OWCP denied appellant's claim for an increased schedule award, finding that the evidence of record was insufficient to establish additional permanent impairment of a scheduled member or function of the body, warranting a schedule award.

Thereafter, OWCP received a December 20, 2022 report, wherein Dr. Wasserlauf advised that appellant had reached MMI on November 17, 2022, the date of his final impairment evaluation. Dr. Wasserlauf diagnosed status post November 16, 2021 right shoulder arthroscopy, debridement, and biceps tenodesis. He referenced his November 17, 2022 progress note regarding his determination of appellant's right upper extremity permanent impairment.

On March 12, 2024 OWCP referred appellant's case, along with a statement of accepted facts (SOAF), to Dr. Taisha S. Williams, a Board-certified orthopedic surgeon serving as an OWCP DMA, for determination of appellant's date of MMI and any permanent impairment of her right upper extremity under the sixth edition of the A.M.A., *Guides*. It specifically requested that Dr. Williams review Dr. Wasserlauf's November 17, 2022 report.

In a report dated March 26, 2024, Dr. Williams reviewed appellant's factual and medical history, including Dr. Wasserlauf's examination findings. She advised that she was unable to utilize the ROM rating method to determine appellant's right shoulder permanent impairment because Dr. Wasserlauf provided ROM measurements and did not provide corresponding motions. Dr. Williams also advised that she was unable to utilize the diagnosis-based impairment (DBI) rating method to determine appellant's right shoulder permanent impairment without knowing the ROM measurements which would allow her to determine the grade modifier for the physical examination (GMPE). Additionally, she advised that she was unable to utilize the ROM and DBI rating methods to determine appellant's right elbow permanent impairment for the same above-noted reasons. Dr. Williams further advised that she was unable to comment on Dr. Wasserlauf's 10 percent right upper extremity permanent impairment rating

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

because he did not explain how he had arrived at his impairment rating. She concluded that MMI was reached on November 17, 2022, the date of Dr. Wasserlauf's impairment evaluation.

On April 24, 2024 OWCP referred appellant, along with a SOAF, the medical record, and a series of questions, to Dr. Ira Spar, a Board-certified surgeon, for a second opinion evaluation. It requested that Dr. Spar provide an opinion regarding permanent impairment of appellant's right upper extremity in accordance with the sixth edition of the A.M.A., *Guides* and the date of MMI.

By decision dated May 21, 2024, OWCP expanded the acceptance of appellant's claim to include sprain of shoulder, upper arm, and rotator cuff, right.

In a May 23, 2024 report, Dr. Spar noted a history of the accepted employment injury and reviewed appellant's medical record. He presented his findings on examination of appellant's right elbow, which included three separate ROM measurements, revealing 0/0/0 degrees of extension, 120/120/120 degrees of flexion, 80/80/80 degrees of pronation, and 80/80/80 degrees of supination. On examination of the right shoulder, Dr. Spar also provided three separate ROM measurements, revealing 90/90/80 degrees of flexion, 50/50/50 degrees of extension, 80/70/80 degrees of abduction, 40/40/40 degrees of adduction, 50/50/50 degrees of internal rotation, and 40/40/40 degrees of external rotation. Regarding permanent impairment of the right elbow, he utilized the DBI rating method of the sixth edition of the A.M.A., *Guides* and found that, under Table 15-4, page 399, appellant's class of diagnosis (CDX) for lateral epicondylitis, status post releases of extensor origins with residual symptoms resulted in a Class 1 impairment. Dr. Spar assigned a grade modifier for functional history (GMFH) of 0, under Table 15-7, page 406, based on no pain and appellant's ability to perform self-care, and an unrelated *Quick*DASH score. He assigned a GMPE of 1, under Table 15-8, page 408, based on mild decreased ROM of the elbow. Dr. Spar indicated that a grade modifier for clinical studies (GMCS), under Table 15-9, page 410, was not applicable. He applied the net adjustment formula (GMFH - CDX) + (GMPE - CDX) or (0 - 1) + (1 - 1) = -1, which resulted in a grade B or four percent permanent impairment of the right elbow. Dr. Spar also utilized the ROM method to rate permanent impairment of the right elbow. He found that, under Table 15-33, page 474, 120 degrees of flexion resulted in three percent permanent impairment of the right elbow. Dr. Spar found that the DBI method produced the higher impairment rating and, thus, concluded that appellant had four percent permanent impairment of the right elbow. Regarding permanent impairment to the right shoulder, he utilized the DBI method and found that, under Table 15-5, page 404, appellant's CDX for labral lesions, including SLAP tears, was a Class 1 impairment. Dr. Spar assigned a GMFH of 2, under Table 15-7, page 406, based on considerable pain issues as appellant could not wash her back, perform overhead work, or lift, and she had pain with normal activity and a *Quick*DASH score of 77. He assigned a GMPE of 1, under Table 15-8, page 408, based on biceps atrophy and crepitus about the shoulder. Dr. Spar assigned a GMCS of 2 for a SLAP tear confirmed at arthroscopic surgery. He applied the net adjustment formula (GMFH - CDX) + (GMPE - CDX) or (2 - 1) + (1 - 1) + (2 - 1) = 2, which resulted in a grade E or five percent permanent impairment of the right shoulder. Dr. Spar also utilized the ROM method to rate impairment of the right shoulder and found that, under Table 15-34, page 475, 90 degrees of flexion resulted in 3 percent impairment, 50 degrees of extension resulted in 0 percent impairment, 80 degrees of abduction resulted in 6 percent impairment, 40 degrees of adduction resulted in 0 percent impairment, 50 degrees of internal rotation resulted in 2 percent impairment, and 40 degrees of external rotation resulted in 4 percent impairment, for a total of 15 percent permanent impairment. Utilizing the Combined Values Chart, page 604, he combined

the 4 percent DBI impairment rating for the right elbow and the 15 percent ROM impairment rating for the right shoulder, to find a total 17 percent permanent impairment of the right shoulder. Dr. Spar determined that appellant had reached MMI on May 23, 2024, the date of his impairment evaluation.

On June 5, 2024 OWCP requested that Dr. Spar review Dr. Cohen's January 3, 2008 report and Dr. Wasserlauf's November 17, 2022 report, and provide a supplemental opinion regarding whether he agreed with their impairment findings.

In a September 3, 2024 supplemental report, Dr. Spar reviewed the reports of Dr. Cohen and Dr. Wasserlauf and opined that appellant had an additional 1 percent ROM permanent impairment of the right elbow due to 10 degree loss of elbow flexion, and an additional 5 percent ROM permanent impairment of the right shoulder due to decreased ROM following appellant's second shoulder procedure, for a total of 6 percent additional ROM permanent impairment of the right upper extremity to the 19 percent previously awarded.

On October 18, 2024 appellant filed claims for compensation (Form CA-7) for disability from work on July 18 and September 20, 2024. In accompanying time analysis forms (Form CA-7a) of even date, she claimed 2.13 hours of leave without pay (LWOP) on July 18, 2024 due to right shoulder pain and 8 hours of LWOP on September 20, 2024 to attend a medical appointment to receive an injection for her right shoulder pain.

On October 30, 2024 OWCP again referred appellant's case to DMA Dr. Williams for a determination of appellant's date of MMI and permanent impairment of her right upper extremity under the sixth edition of the A.M.A., *Guides*.

In a development letter dated November 5, 2024, OWCP informed appellant of the deficiencies of her claims for disability on July 18 and September 20, 2024. It advised her of the type of medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

Appellant, in a November 12, 2024 response, indicated that she did not see a physician to receive an injection on July 18 or September 20, 2024, because she was advised by her physician that it was too soon for her to have another injection for her right shoulder pain. Instead, she missed work on those dates due to pain, and she took pain medication on both dates for her right shoulder condition.

In a November 14, 2024 report, Dr. Williams noted her review of the medical record. Utilizing the ROM method to rate permanent impairment of appellant's right shoulder, she found that, under Table 15-34, 90 degrees of flexion yielded 3 percent impairment, 50 degrees of extension yielded 0 percent impairment, 80 degrees of abduction yielded 6 percent impairment, 40 degrees of adduction yielded 0 percent impairment, 50 degrees of internal rotation yielded 2 percent impairment, and 40 degrees of external rotation yielded 2 percent impairment for a total for of 13 percent permanent impairment of the right shoulder. Dr. Williams then found that, under Table 15-35, the grade modifier for ROM was 2. The DMA advised that since the GMFH was also 2, appellant's right shoulder permanent impairment remained at 13 percent. Dr. Williams also utilized the DBI methodology to rate permanent impairment of the right shoulder. The DMA noted that while the accepted diagnosed condition was right shoulder strain, appellant was status post a distal clavicle excision. She noted that OWCP allowed for the rating

of nonaccepted, nonindustrial diagnoses that were present at the time of the impairment examination. The DMA advised that since appellant's distal clavicle excision would yield a higher impairment rating than the accepted right shoulder strain, it would be used to determine appellant's impairment rating. She found that, under Table 15-5, a CDX for distal clavicle excision was a Class 1 impairment with a default grade of C which corresponded to 10 percent permanent impairment. The DMA assigned a GMFH of 2 for a *Quick*DASH score of 77, a GMPE of 2 for moderate ROM deficits, and a GMCS of 1 for mild pathology seen on imaging. She applied the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS – CDX) or (2 - 1) + (2 - 1) + (1 – 1) = 2, which moved the grade two places to the right resulting in a grade E or 12 percent right shoulder permanent impairment. Regarding the right elbow, the DMA used the ROM methodology to rate permanent impairment of the right elbow and found that, under Table 15-33, 120 degrees of flexion yielded 3 percent impairment, however 130 degrees of flexion on the unaffected side corresponded to 3 percent impairment for a net impairment of 0 percent. She noted that extension, pronation, and supination were normal. Therefore, the DMA found that appellant had no permanent impairment of the right elbow based on the ROM method. She also utilized the DBI methodology to rate permanent impairment of the right elbow. The DMA noted the accepted diagnosis of lateral epicondylitis status post release. She further noted that Dr. Spar had placed the elbow impairment in Class 1, even though appellant was asymptomatic. The DMA indicated that appellant had decreased ROM, but there was no net impairment for ROM when compared to the unaffected side which also had decreased ROM. Based on Table 15-4, she found no residual findings and, therefore, no permanent impairment of the right elbow under the DBI method. The DMA concluded that appellant had 13 percent permanent impairment of the right upper extremity, based on appellant's loss of ROM of the right shoulder. She also explained that as appellant had previously received a schedule award for 19 percent permanent impairment of the right upper extremity, 16 percent of the award being for the shoulder, the current impairment was included in the previous impairment and no additional award should be granted. Dr. Williams also addressed the discrepancy between her rating and Dr. Spar's. She indicated that she had reviewed his reports dated May 23 and September 3, 2024. Regarding appellant's right elbow, she noted that appellant had no complaints, except for a reduced ROM. However, since the opposite elbow was neither involved or previously injured, it must be used to define normal. In comparing sides, appellant had no net impairment for loss of ROM. Dr. Williams explained that as appellant had no other symptoms or findings, her elbow impairment was Class 0 and was rated as zero percent permanent impairment under the DBI method. Regarding the right shoulder, Dr. Williams explained that the only reason their impairment calculations did not agree was because Dr. Spar opined that 40 degrees of external rotation corresponded with four percent permanent impairment, but according to Table 15-34, 40 degrees of external rotation lies between 50 degrees of external rotation and 30 degrees of internal rotation and would correspond to two percent rating.

By decision dated December 31, 2024, OWCP denied appellant's claims for compensation, finding that the medical evidence of record was insufficient to establish disability from work on July 18 and September 20, 2024, causally related to her accepted employment injury.

In a separate decision also dated December 31, 2024, OWCP denied appellant's claim for an increased schedule award, finding that she had not established greater than 19 percent permanent impairment of the right upper extremity previously awarded.

On January 13, 2025 appellant requested reconsideration of the December 31, 2024 schedule award decision. She contended that she had 16 percent permanent impairment of her right shoulder based on an enclosed report dated July 17, 2017 from Dr. Miranda. The Board notes, however, that Dr. Miranda's July 17, 2017 report did not accompany appellant's January 13, 2025 reconsideration request.

Appellant also submitted a January 10, 2025 note, wherein Dr. James K. Ware, a Board-certified orthopedic surgeon, indicated that appellant was seen in his office on that date.

By decision dated January 14, 2025, OWCP denied appellant's request for reconsideration of the merits of her schedule award claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim,[7] including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[8] For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.[9] Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.[10]

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.[11]

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[12]

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[6] *Supra* note 2.

[7] *See L.S.,* Docket No. 18-0264 (issued January 28, 2020); *B.O.,* Docket No. 19-0392 (issued July 12, 2019).

[8] *See S.F.,* Docket No. 20-0347 (issued March 31, 2023); *D.S.,* Docket No. 20-0638 (issued November 17, 2020); *F.H.,* Docket No. 18-0160 (issued August 23, 2019); *C.R.,* Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty,* 45 ECAB 383 (1994); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[9] *T.W.,* Docket No. 19-1286 (issued January 13, 2020).

[10] *S.G.,* Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi,* 52 ECAB 291-92 (2001).

[11] *See B.P.,* Docket No. 23-0909 (issued December 27, 2023); *D.W.,* Docket No. 20-1363 (issued September 14, 2021); *Y.S.,* Docket No. 19-1572 (issued March 12, 2020).

[12] *See M.J.,* Docket No. 19-1287 (issued January 13, 2020); *William A. Archer,* 55 ECAB 674 (2004); *Fereidoon Kharabi, supra* note 10.

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work on July 18 and September 20, 2024, causally related to her accepted employment injury.

On November 12, 2024 appellant explained that she had not sought medical treatment on July 18 or September 20, 2024, however, she was disabled on those days due to shoulder pain. Appellant's lay opinion is insufficient to discharge her burden of proof as the Board has held that lay individuals are not competent to render a medical opinion.[13]

As the evidence of record is insufficient to establish that appellant was totally disabled on the claimed dates, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provisions of FECA[14] and its implementing regulations[15] 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.[16] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[17] 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.[18]

In addressing upper extremity impairment, the sixth edition requires identification of the CDX, which is then adjusted by grade modifiers or GMFH, GMPE, and GMCS.[19] The net

[13] *See L.W.,* Docket No. 14-0503 (issued June 20, 2014); *Gloria J. McPherson,* 51 ECAB 441 (2000); *James A. Long,* 40 ECAB 538 (1989).

[14] 5 U.S.C. § 8107.

[15] 20 C.F.R. § 10.404.

[16] *Id.*; *see also Ronald R. Kraynak,* 53 ECAB 130 (2001).

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

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

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

adjustment formula is (GMH - CDX) + (GME - CDX) + (GMS - CDX).[20] 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.[21]

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.[22] 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.[23] 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.[24]

Regarding the application of ROM or DBI methods 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.*"[25] (Emphasis in the original.)

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.[26]

[20] *Id.* at 411.

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

[22] *Id.* at 461.

[23] *Id.* at 473.

[24] *Id.* at 474.

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

[26] *See supra* note 17 at Chapter 2.808.6f (March 2017). *See also P.W.,* Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan,* 57 ECAB 349 (2006).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish greater than 19 percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

On March 18, 2008 appellant received a schedule award for 19 percent permanent impairment of the right upper extremity based upon the January 3, 2008 report from Dr. Cohen. She was found to have 16 percent permanent impairment of the right shoulder, and 3 percent permanent impairment of the right elbow. In a report dated July 17, 2017, Dr. Miranda also concluded that appellant had 16 percent permanent impairment of the right shoulder.

In support of an increased schedule award, appellant submitted a December 20, 2022 report from Dr. Wasserlauf, her treating physician. He referenced his November 17, 2022 progress note, in which he opined that appellant had 10 percent ROM permanent impairment of the right upper extremity. Dr. Williams, the DMA for OWCP, reviewed Dr. Wasserlauf's November 17, 2022 progress note on March 26, 2024 and correctly advised that she was unable to determine impairment ratings for the right shoulder and right elbow under the ROM and DBI rating methods because Dr. Wasserlauf did not explain how he arrived at his impairment rating. The Board, therefore, finds that his report lacks probative value and is insufficient to establish appellant's claim for an increased schedule award.[27]

OWCP referred appellant to Dr. Spar for a second opinion evaluation to rate her right upper extremity permanent impairment. On May 23, 2024 he obtained ROM measurements of appellant's right elbow and right shoulder. Regarding permanent impairment of the right elbow, Dr. Spar utilized the DBI rating method and found that appellant had four percent permanent impairment of the right elbow. He also utilized the ROM rating method and found that she had three percent permanent impairment of the right elbow. Dr. Spar found that the DBI method produced the higher impairment rating and, thus, concluded that appellant had four percent permanent impairment of the right elbow. Regarding permanent impairment of the right shoulder, he utilized the DBI rating method and found that appellant had five percent permanent impairment of the right shoulder. Dr. Spar also utilized the ROM rating method and found that she had 15 percent permanent impairment of the right shoulder. Utilizing the Combined Values Chart, page 604, he combined the 4 percent DBI impairment rating and 15 percent ROM impairment rating for a total 17 percent permanent impairment of the right upper extremity.

In a September 3, 2024 supplemental report, Dr. Spar reviewed the reports of both Dr. Cohen and Dr. Wasserlauf and opined that appellant had an additional 1 percent ROM permanent impairment of the right elbow due to a loss of 10 degrees of flexion and an additional 5 percent ROM permanent impairment of the right shoulder due to decreased ROM over the years, for an additional total of 6 percent ROM permanent impairment of the right upper extremity. He did not explain, however, which measurements supported additional ROM impairments. This report was therefore insufficient to establish appellant's claim for an increased schedule award.[28]

[27] *See A.T.*, Docket No. 20-0370 (issued September 27, 2021); *L.C.*, Docket No. 19-0564 (issued September 16, 2019).

[28] *Id.*

On November 14, 2024 Dr. Williams, OWCP's DMA, reviewed Dr. Spar's reports. She opined that appellant had 13 percent permanent impairment of the right upper extremity, based on appellant's loss of ROM of the right shoulder. The DMA noted that appellant previously received a schedule award for 19 percent right upper extremity permanent impairment and found that she had no additional permanent impairment. Utilizing the ROM method to rate permanent impairment of appellant's right shoulder, she found that, under Table 15-34, 90 degrees of flexion yielded 3 percent impairment, 50 degrees of extension yielded 0 percent impairment, 80 degrees of abduction yielded 6 percent impairment, 40 degrees of adduction yielded 0 percent impairment, 50 degrees of internal rotation yielded 2 percent impairment, and 40 degrees of external rotation yielded 2 percent impairment for a total of 13 percent permanent impairment of the right shoulder. Referring to Table 15-35, the DMA found that the grade modifier for ROM was 2. She advised that since the GMFH was also 2, appellant's right shoulder permanent impairment remained at 13 percent. The DMA also utilized the DBI method to rate permanent impairment of the right shoulder and explained, in accordance with the A.M.A., *Guides*, that her impairment rating was based on appellant's distal clavicle excision rather than her accepted right shoulder strain as the former condition would yield a higher impairment rating. Referring to Table 15-5, she found that a CDX for distal clavicle excision was a Class 1 impairment with a default grade of C which corresponded to 10 percent permanent impairment. The DMA assigned a GMFH of 2 for a *Quick*DASH score of 77, a GMFH of 2 for moderate ROM deficits, and a GMCS of 1 for mild pathology seen on imaging. She utilized the net adjustment formula, which resulted in a grade E or 12 percent permanent impairment of the right shoulder. The DMA therefore concluded that appellant had 13 percent permanent impairment of the right shoulder, pursuant to the ROM method. Regarding appellant's right elbow, she utilized the ROM method and found that, under Table 15-33, 120 degrees of flexion yielded 3 percent impairment, however, because appellant had 130 degrees of flexion on the unaffected side, which corresponded to 3 percent impairment, appellant's net impairment of 0 percent. The DMA noted that extension, pronation, and supination were normal. Thus, she found that appellant had no permanent impairment of the right elbow based on the ROM method. The DMA also utilized the DBI method to rate permanent impairment of the right elbow. Referring to Table 15-4, she found that appellant had no residual permanent impairment based on the accepted diagnosis of lateral epicondylitis status post release. The DMA again explained that appellant did not have any symptoms other than loss of ROM. While appellant had decreased ROM, there was no net impairment for ROM when compared to the unaffected side which also had decreased ROM. She concluded that appellant had no permanent impairment of the right elbow under the DBI method.

Dr. Williams also properly explained the discrepancy between her rating and Dr. Spar's. She indicated that she had reviewed his reports dated May 23 and September 3, 2024. Regarding appellant's right elbow, Dr. Wiliams noted that appellant had a reduced ROM. However, since the opposite elbow was neither involved nor previously injured, it must be used to define normal. In comparing sides, appellant had no net impairment for loss of ROM. Dr. Williams concluded that using the DBI method for the diagnosis of lateral epicondylitis status post release, since appellant had no other symptoms, her right elbow impairment was Class 0 and was rated as zero percent permanent impairment of the right elbow under the DBI method. Regarding the right shoulder, she explained that the only reason their impairment calculations did not agree was because Dr. Spar opined that 40 degrees of external rotation corresponded with four percent permanent impairment, but according to Table 15-34, 40 degrees of external rotation lay between 50 degrees of external rotation and 30 degrees of internal rotation and would correspond to two

percent rating. Therefore, the DMA concluded that appellant had a total 13 percent permanent impairment of the right upper extremity, due to her loss of right shoulder ROM.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Williams, the DMA, as she provided a permanent impairment rating that properly applied the sixth edition of the A.M.A., *Guides*.[29] The record does not contain any other medical evidence establishing greater than the 19 percent permanent impairment of the right upper extremity previously awarded. Accordingly, appellant has not met her burden of proof to establish entitlement to a schedule award for a percentage of impairment greater than the 19 percent permanent impairment of the right upper extremity previously awarded.[30]

Appellant may request a schedule award or an 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 3

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.[31]

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 considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[32]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[33] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[34] If the request is timely, but fails to meet at least one of the

[29] *See L.D.*, Docket No. 19-0797 (issued October 2, 2019).

[30] *See T.W.,* Docket No. 18-0765 (issued September 20, 2019).

[31] 5 U.S.C. § 8128(a); *see R.A.,* Docket No. 25-0522 (issued June 18, 2025); *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).

[32] 20 C.F.R. § 10.606(b)(3); *see R.A., id.*; *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).

[33] 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.

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

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[35]

ANALYSIS -- ISSUE 3

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

In her January 13, 2025 request for reconsideration of the December 31, 2024 schedule award decision, appellant contended that she had 16 percent permanent impairment of her right shoulder based on an accompanying July 17, 2017 report from Dr. Miranda. As the issue of an increased schedule award is medical in nature, her lay opinion is irrelevant. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[36] Appellant's opinion is therefore insufficient to reopen her case on the merits of her claim. Thus, she is not entitled to a review of the merits based on the first, second, and third above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also submitted a January 10, 2025 note with her reconsideration request, wherein Dr. Ware indicated that appellant was seen in his office on that date. However, Dr. Ware did not provide a permanent impairment rating based upon the sixth edition of the A.M.A., *Guides*. Thus, this evidence is irrelevant to the underlying issue of whether appellant has established greater than 19 percent permanent impairment of the right upper extremity. The Board has held that the submission of evidence or argument which does not address the particular issue involved, does not constitute a basis for reopening a case.[37] As such, appellant is not entitled to further review of the merits of her claim based on the third requirement under section 10.606(b)(3).

The Board, therefore, 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 her burden of proof to establish disability from work on July 18 and September 20, 2024, causally related to her accepted employment injury. The Board further finds that appellant has not met her burden of proof to establish greater than 19 percent permanent impairment of her right upper extremity, for which she previously received a schedule award. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of her schedule award claim, pursuant to 5 U.S.C. § 8128(a).

[35] *Id.* at § 10.608(b); *L.C.,* Docket No. 25-0444 (issued April 23, 2025); *see T.V.,* Docket No. 19-1504 (issued January 23, 2020); *E.R.,* Docket No. 09-1655 (issued March 18, 2010).

[36] *See D.S.,* Docket No. 25-0564 (issued June 25, 2025); *M.K.,* Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper;* 31 ECAB 224, 225 (1979).

[37] *See K.H.,* Docket No. 25-0242 (issued March 4, 2025); *O.A.,* Docket No. 22-1350 (issued May 24, 2023); *A.M.,* Docket No. 20-1417 (issued July 30, 2021); *E.J.,* Docket No. 19-1509 (issued January 9, 2020); *M.K.,* Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper, id.*

ORDER

IT IS HEREBY ORDERED THAT the December 31, 2024 and January 14, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 4, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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