

**United States Department of Labor
Employees' Compensation Appeals Board**

| | | |
|--|---|--------------------------------|
| T.M., Appellant |) | |
| |) | |
| |) | |
| and |) | Docket No. 25-0678 |
| |) | Issued: August 15, 2025 |
| U.S. POSTAL SERVICE, DE SOTO POST OFFICE, De Soto, MO, 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 July 7, 2025 appellant filed a timely appeal from January 30 and 31, and June 2 and 13, 2025 merit decisions and a July 7, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant is entitled to additional schedule award compensation for facial disfigurement; (2) whether appellant has met her burden of proof to establish greater than 10 percent permanent impairment of the right lower extremity or 11 percent permanent impairment

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 7, 2025 decision, OWCP received additional evidence. 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.*

of the left lower extremity, for which she previously received schedule award compensation; and (3) whether OWCP properly denied appellant's request for an oral hearing, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On October 30, 2019 appellant, then a 42-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 29, 2019 she sustained a neck injury as a result of a motor vehicle accident while in the performance of duty. She noted that her long-life vehicle left the roadway and struck a tree. Appellant stopped work on the date of injury and returned to work on March 10, 2020.

OWCP accepted the claim for fracture of one right rib with delayed healing; closed fracture of nasal bones; multiple closed fractures of left ribs; and contusions of the abdominal wall, left front wall of thorax, and left lower leg.

On November 22, 2019 appellant underwent OWCP-authorized surgery by Dr. Kelly Currier, a Board-certified plastic surgeon, including bilateral upper thigh Morel Lavallee lesion drainage and exploration and complex closure of right chin laceration.

OWCP thereafter expanded its acceptance of the claim to include acquired deformity of nose; injury of facial nerve right side; contusion of right back wall of thorax; deviated nasal septum; other infiltrative disorders of the skin and subcutaneous tissue; radiculopathy, aggravation of spondylolisthesis, and aggravation of spondylosis at L5-S1; fat necrosis of breast; and laceration without foreign body of other part of head.

On April 30, 2021 appellant underwent additional OWCP-authorized surgery to her lower back performed by Dr. Pooria Salari, a Board-certified orthopedic surgeon, including anterior lumbar disectomy and interbody fusion at L5-S1; application of interbody device; posterior L5-S1 fusion with instrumentation; and application of cancellous allograft.

On March 19, 2024 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

By decision dated April 19, 2024, OWCP granted appellant a schedule award for nine percent permanent impairment of the right lower extremity and nine percent permanent impairment of the left lower extremity. The award ran for 51.84 weeks from November 15, 2023 through November 11, 2024.

In a July 10, 2024 impairment and range of motion (ROM) worksheet, Dr. Olakunle Odunleye, an occupational medicine physician, documented appellant's physical examination findings on that date. Regarding the low back, he observed reduced lumbar flexion; normal sensation in the L3 through S1 dermatomes; reduced strength in the hip flexors, adductors, leg flexors and extensors, ankles, and great toes; positive Lasegue's sign and straight leg raising, bilaterally; and reduced circumference of the thigh and calf on the left compared to the right. Regarding the hips and knees, Dr. Odunleye observed tenderness and spasms in the posterior superior iliac spine on the right; reduced abduction and adduction in the hips, right worse than left; effusion and crepitus in the left knee; and an impaired, shuffling gait due to decreased hip flexion

and trouble lifting her feet. He also noted a six-centimeter scar on appellant's face and her subjective complaints of tingling and pulsing in the face.

In a July 25, 2024 impairment rating evaluation report, Dr. James Brien, a Board-certified anesthesiologist, noted appellant's history, medical record, and current complaints, including back pain that radiated into her sacrum, down the back of her legs, and into the back of her calves, chronic pain and sensitivity to touch in her anterior thighs, frequent pain in her hips anteriorly and posteriorly, and constant numbness in her chin with right-sided facial droop. He applied the diagnosis-based impairment (DBI) rating method of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment* (July/August 2009) (*The Guides Newsletter*) to Dr. Odunleye's July 10, 2024 examination findings. Dr. Brien referenced Table 16-4 (Hip Regional Grid), page 512, and found that the class of diagnosis (CDX) for chronic trochanteric bursitis was Class 1, grade C, with a default value of seven percent of each lower extremity. He assigned a grade modifier for functional history (GMFH) of 2 for antalgic limp and a grade modifier for physical examination (GMPE) of 2 for reduced ROM and noted that a grade modifier for clinical studies (GMCS) was inapplicable. Dr. Brien applied the net adjustment formula, which resulted in 2, for final impairment ratings of nine percent of the left lower extremity and nine percent of the right lower extremity, pursuant to the A.M.A., *Guides*. For right- and left-sided S1 nerve root impairment, he referenced *The Guides Newsletter* and found a CDX of Class 1 for motor impairment. Dr. Brien assigned a GMFH of 2 and a GMCS of 2 and found GMPE was not applicable, which resulted in a net adjustment of 2 and a final rating of five percent of the right lower extremity and five percent of the left lower extremity. Referencing the Combined Values Chart, he calculated that the lower extremity impairments for the hips and S1 nerve roots equated to 14 percent right lower extremity permanent impairment and 14 percent left lower extremity impairment. Dr. Brien also advised that appellant's lower extremity condition did not warrant use of the ROM rating method.

OWCP also received an August 18, 2024 attending physician's report for disfigurement (Form CA-1094) by Dr. Brien.

On August 20, 2024 appellant filed a Form CA-7 requesting an increased schedule award.

In a development letter dated October 29, 2024, OWCP noted that it had received appellant's claim for a schedule award for a permanent disfigurement as a result of her accepted employment injury. It advised her that a schedule award was not to exceed \$3,500.00 for serious disfigurement of the face, head, or neck if such disfigurement was likely to handicap an individual in securing or maintaining employment. OWCP directed appellant to complete an enclosed Application for Disfigurement (Form CA-1094) and to attach two photographs to the application which showed different views of the disfigurement.

On October 30, 2024 appellant filed a Form CA-1094 with attached photographs, which alleged "face disfigurement due to face laceration [and] nerve damage from motor vehicle

³ A.M.A., *Guides* (6th ed. 2009)

accident. It is a huge scar and is also numb [and] tingling to the touch. My smile is crooked. I also talk sideways because of this.”

On October 30, 2024 OWCP referred appellant, along with the medical record and a statement of accepted facts (SOAF), to Dr. Michael Ralph, a Board-certified orthopedic surgeon, for a second opinion examination and impairment rating evaluation of her lower extremities.

On November 7, 2024 OWCP referred appellant, the medical record, and photographs to Dr. David I. Krohn, a Board-certified internist serving as an OWCP district medical adviser (DMA), for an assessment of facial disfigurement.

In a November 22, 2024 report, Dr. Ralph noted the history of the October 29, 2019 employment injury and reviewed appellant’s medical treatment and complaints. He performed a physical examination and observed normal reflexes, strength, sensation, and ROM in the lower extremities; negative straight leg raising; and full extension, rotation, and side bending in the back. Dr. Ralph opined that appellant reached maximum medical improvement (MMI) on November 22, 2024, the date of his evaluation. He referenced *The Guides Newsletter*, and given his clinical examination of the lower extremities, he did not find a ratable impairment of the lower extremities for spinal nerve impairment. Dr. Ralph also referenced Table 16-4 and found one percent left lower extremity impairment for soft tissue injury to the anterior pelvis. For the lumbar spine, he referenced Table 17-4, Lumbar Spine Regional Grid: Spine Impairments, page 570, and found an eight percent whole person impairment (WPI), which converted to a 20 percent lower extremity impairment, which he divided as 10 percent permanent impairment of each leg. Dr. Ralph then combined the additional one percent permanent impairment of the left lower extremity for anterior pelvis contusion, for final ratings of 10 percent permanent impairment of the right lower extremity and 11 percent permanent impairment of the left lower extremity. He also advised that appellant’s lower extremity condition did not warrant use of the ROM rating method.

In a January 5, 2025 report, Dr. Krohn reviewed the medical record, SOAF, and photographs and found that appellant’s facial scars were disfiguring and that she had reached MMI as of July 10, 2024.

In a memorandum to file dated January 29, 2025, an OWCP office director reviewed photographs and Dr. Krohn’s January 5, 2025 report and determined that appellant’s facial disfigurement was likely to hinder her ability to secure or maintain employment. OWCP’s office director determined that the maximum schedule award amount of \$3,500.00 was warranted for facial disfigurement.

On January 30, 2025 OWCP granted appellant a schedule award for facial disfigurement in the amount of \$3,500.00.

By decision dated January 31, 2025, OWCP granted appellant an additional schedule award of 1 percent of the right lower extremity and 2 percent of the left lower extremity, for a total of 10 percent permanent impairment of the right lower extremity and 11 percent permanent impairment of the left lower extremity. It noted that it had accorded the weight of the medical evidence to Dr. Ralph. The additional award ran for 8.64 weeks from November 22, 2024 through January 21, 2025.

On March 2, 2025 appellant requested reconsideration and a review of the written record by a representative of OWCP's Branch of Hearings and Review with respect to OWCP's January 31, 2025 decision regarding the permanent impairment of her lower extremities.

On March 5, 2025 appellant, through counsel, clarified that she wished to request reconsideration, not an oral hearing, with respect to OWCP's January 31, 2025 decision.

By decision dated June 2, 2025, OWCP denied modification of its January 31, 2025 decision.

On June 8, 2025 appellant requested reconsideration of OWCP's June 2, 2025 decision.

By decision dated June 13, 2025, OWCP denied modification of the June 2, 2025 decision.

On July 2, 2025 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 7, 2025, OWCP denied appellant's hearing request, pursuant to 5 U.S.C. § 8124(b). It found that she was not entitled to a hearing as a matter of right as she had previously requested reconsideration. OWCP further denied appellant's request as the issues in this case could equally well be addressed by requesting a new reconsideration and submitting additional evidence to OWCP.

LEGAL PRECEDENT -- ISSUE 1

FECA provides in section 8107(c)(21) that, for serious disfigurement of the face, head or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$3,500.00 shall be awarded in addition to any other compensation payable under this schedule.⁴

OWCP's procedures provide that, after obtaining all necessary medical evidence, photographs, and a completed application for disfigurement (Form CA-1094), the file should be routed to OWCP's DMA for a description of the disfigurement and an opinion stating whether MMI has occurred. If the DMA finds MMI has occurred, the concurrence of the Assistant District Director or the District Director must be obtained. The parties evaluating the disfigurement will place a memorandum in the file which states their findings and decision with supporting rationale. The case will then be returned for payment of the award not to exceed \$3,500.00, or denial of the application.⁵

In a case involving facial disfigurement, the question before the Board is whether the amount awarded by OWCP was based upon sound and considered judgment and was proper and

⁴ 5 U.S.C. § 8107(c)(21).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.10d (February 2013).

equitable under the circumstances as provided by section 8107(c)(21) of FECA.⁶ As the only limitation on OWCP's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions that are contrary to both logic and probable deduction from established facts.⁷ The Board will not interfere with or set aside a disfigurement determination of OWCP unless it is clearly in error.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly followed its procedures in determining that appellant was entitled to the maximum award for facial disfigurement. Dr. Krohn, an OWCP DMA, reviewed her file and determined that she had reached MMI by July 10, 2024. OWCP's office director concurred that appellant be awarded \$3,500.00, which represents the maximum award allowable under the schedule.

The Board notes that FECA is specific as to the method and amount of payment of compensation for facial disfigurement.⁹ Neither OWCP nor the Board has the authority to enlarge the terms of FECA or to make an award of benefits under terms other than those specified in the statute.¹⁰ Appellant has received the maximum award available for facial disfigurement and is not entitled to any additional sum for this impairment. The Board, therefore, finds that OWCP followed proper procedures and did not abuse its discretion in issuing a schedule award in the maximum allowable amount for appellant's facial disfigurement.¹¹

LEGAL PRECEDENT -- ISSUE 2

The schedule award provisions of FECA¹² and its implementing regulations¹³ 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

⁶ *Hylan Shelton*, 57 ECAB (2006).

⁷ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁸ *Matthew Leonka*, 38 ECAB 119, 121 (1986).

⁹ See *W.C.*, Docket No. 07-2257 (issued March 5, 2008).

¹⁰ *G.S.*, Docket No. 17-1318 (issued October 11, 2017); *S.K.*, Docket No. 08-848 (issued January 26, 2009).

¹¹ Section 8107(c)(22) of FECA also provides that skin has been added to the list of scheduled members for which FECA provides compensation for loss. 5 U.S.C. § 8107(c)(22); see also 20 C.F.R. § 10.404 (2011). Appellant may file a Form CA-7 if she believes that her accepted skin conditions have resulted in a ratable skin impairment. Chapter 8 in the A.M.A., *Guides* outlines specific criteria to be considered when calculating permanent impairment of the skin. A.M.A., *Guides* 383-492.

¹² *Supra* note 1.

¹³ 20 C.F.R. § 10.404.

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.¹⁴ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.¹⁵

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.¹⁶ 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 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*.¹⁷

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*.¹⁸ Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by a GMFH, a GMPE, and/or a GMCS.¹⁹ The net adjustment formula is $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.²⁰ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.²¹

Neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.²² Furthermore, the back is specifically excluded from the definition of organ under FECA.²³ The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth

¹⁴ *Id.*; *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

¹⁵ *Supra* note 5 at Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹⁶ *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁷ *Supra* note 5 at Chapter 2.808.5 (March 2017).

¹⁸ A.M.A., *Guides*, page 3, section 1.3.

¹⁹ *Id.* at 493-556.

²⁰ *Id.* at 521.

²¹ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

²² *G.W.*, Docket No. 23-0600 (issued September 20, 2023); *K.Y.*, Docket No. 18-0730 (issued August 21, 2019); *L.L.*, Docket No. 19-0214 (issued May 23, 2019); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

²³ *See* 5 U.S.C. § 8101(19); *see also* *T.M.*, Docket No. 23-0211 (issued August 10, 2023); *G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter* is to be applied.²⁴ The Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.²⁵

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.²⁶ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.²⁷ If a case has been referred for a referee evaluation to resolve the issue of permanent impairment, it is appropriate for an OWCP DMA to review the calculations to ensure the referee physician appropriately used the A.M.A., *Guides*.²⁸

ANALYSIS -- ISSUE 2

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

Appellant's attending physician, Dr. Odunleye, performed a physical examination on July 10, 2024 and observed reduced lumbar flexion; reduced strength in the hip flexors, adductors, leg flexors and extensors, ankles, and great toes; positive Lasegue's sign and straight leg raising, bilaterally; reduced circumference of the thigh and calf on the left compared to the right; tenderness and spasms in the posterior superior iliac spine on the right; reduced abduction and adduction in the hips, right worse than left; effusion and crepitus in the left knee; and an impaired, shuffling gait due to decreased hip flexion and trouble lifting her feet. Based upon Dr. Odunleye's physical examination findings, Dr. Brien, also an attending physician, applied the A.M.A., *Guides* and *The Guides Newsletter* and found permanent impairment for the hips and S1 nerve roots of 14 percent of the right lower extremity and 14 percent of the left lower extremity.

OWCP referred appellant to Dr. Ralph for a second opinion examination. During his November 22, 2024 evaluation, Dr. Ralph observed normal reflexes, strength, sensation, and ROM in the lower extremities; negative straight leg raising; and full extension, rotation, and side bending in the back. He referenced *The Guides Newsletter* and found no ratable impairment of the lower

²⁴ *Supra* note 15 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

²⁵ C.J., Docket No. 21-1389 (issued July 24, 2023); E.D., Docket No. 13-2024 (issued April 24, 2014); D.S., Docket No. 13-2011 (issued February 18, 2014).

²⁶ 5 U.S.C. § 8123(a); *see* R.C., Docket No. 18-0463 (issued February 7, 2020); *see also* G.B., Docket No. 16-0996 (issued September 14, 2016).

²⁷ 20 C.F.R. § 10.321; P.H., Docket No. 21-0233 (issued May 10, 2023); R.C., 58 ECAB 238 (2006).

²⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8k (February 2013).

extremities for spinal nerve impairment. Utilizing Table 16-4, Dr. Ralph found one percent left lower extremity impairment for soft tissue injury to the anterior pelvis.²⁹

As Dr. Odunleye and Dr. Ralph disagreed regarding the findings on physical examination, a conflict in medical opinion exists between these physicians regarding the nature and extent of any sensory, strength, motor, or ROM deficits in appellant's hips and lower extremities.³⁰ As there is an unresolved conflict in the medical evidence, the case must be remanded to OWCP for referral to an impartial medical examiner (IME) for resolution of the conflict in accordance with 5 U.S.C. § 8123(a).³¹

On remand, OWCP shall refer the case record, the SOAF, and appellant to a specialist in the appropriate field of medicine, to serve as an IME, for a reasoned opinion regarding the extent of additional permanent impairment, if any. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.³²

CONCLUSION

The Board finds that OWCP did not abuse its discretion in issuing a schedule award in the maximum allowable amount for appellant's facial disfigurement. The Board finds that this case is not in posture for decision with regard to whether appellant has established more than 10 percent permanent impairment of her right extremity or more than 11 percent permanent impairment of her left lower extremity, for which she previously received a schedule award.

²⁹ Dr. Ralph also referenced Table 17-4, Lumbar Spine Regional Grid: Spine Impairments, and found 10 percent permanent impairment of each leg, which rating OWCP relied upon in its January 31 and June 2 and 13, 2025 decisions, citing FECA Transmittal No. 25-03 issued on January 10, 2025. As noted above, neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole. 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see A.G.*, Docket No. 18-0815 (issued January 24, 2019); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000). Moreover, on February 10, 2025, OWCP revoked FECA Transmittal No. 25-03. FECA Transmittal No. 25-04 (issued on February 10, 2025).

³⁰ *See S.H.*, Docket No. 23-0216 (issued December 7, 2023); *S.W.*, Docket No. 22-0917 (issued October 26, 2022).

³¹ 5 U.S.C. § 8123(a).

³² In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2025 decision of the Office of Workers' Compensation Programs is affirmed. The January 31 and June 2 and 13, 2025 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 15, 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