

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

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<b>D.B., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 25-0687</b>
	)	<b>Issued: August 28, 2025</b>
<b>U.S. RAILROAD RETIREMENT BOARD, Chicago, IL, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On July 10, 2025 appellant filed a timely appeal from a June 20, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a greater permanent impairment than that for which she previously received schedule award compensation.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the June 20, 2025 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 12, 1999 appellant, then a 48-year-old computer specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 15, 1998 she injured her back when a box full of books fell and hit her while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx023 and accepted the conditions of lumbar strain and displacement of lumbar intervertebral disc without myelopathy.<sup>4</sup>

By decision dated February 12, 2002, OWCP granted appellant a schedule award for 30 percent permanent impairment of the right lower extremity (right leg). The award ran for 86.4 weeks for the period November 12, 2001 through July 9, 2003 and was based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>5</sup>

By decision dated September 16, 2005, OWCP granted appellant a schedule award for 15 percent permanent impairment of the left lower extremity. The award ran for 43.2 weeks for the period June 6, 2005 through April 4, 2006 and was based on the fifth edition of the A.M.A., *Guides*.

Appellant stopped work on November 22, 2006. She retired from federal employment on or about July 31, 2007.

On October 31, 2019 appellant filed a claim for compensation (Form CA-7) for an increased schedule award.

In a December 6, 2019 report, Dr. Samuel J. Chmell, an attending Board-certified orthopedic surgeon, opined that, under the sixth edition of the A.M.A., *Guides*,<sup>6</sup> appellant had 39 percent permanent impairment of the right lower extremity and 39 percent permanent impairment of the left lower extremity.

In a February 3, 2020 report, Dr. Michael M. Katz, a Board-certified orthopedic surgeon, serving as an OWCP district medical adviser (DMA), reviewed a statement of accepted facts (SOAF) and medical evidence. He noted several problems with Dr. Chmell's December 6, 2019

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<sup>3</sup> Docket No. 23-0789 (issued October 13, 2023); Docket No. 22-0304 (issued June 29, 2022).

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx023. Under OWCP File No. xxxxxx017, it accepted temporary aggravation of mild asthma and temporary aggravation of chronic back pain, resolved as of December 21, 2006. OWCP has administratively combined OWCP File Nos. xxxxxx023 and xxxxxx017, with the latter serving as the master file.

<sup>5</sup> A.M.A., *Guides* (5<sup>th</sup> ed 2001).

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

report and recommended a second opinion impairment evaluation. Dr. Katz found that the date of maximum medical improvement (MMI) was undetermined.

By decision dated April 6, 2021, OWCP denied appellant's claim for an increased schedule award.

On July 1, 2021 appellant requested reconsideration.

By decision dated July 21, 2021, OWCP denied modification of its April 6, 2021 decision.

On September 3, 2021 appellant requested reconsideration.

On October 5, 2021 OWCP referred appellant to Dr. John J. Koehler, Board-certified in occupational medicine, for a second opinion evaluation regarding permanent impairment of appellant's lower extremities. In a report dated October 25, 2021, Dr. Koehler noted appellant's medical course and physical examination findings. He indicated that he had rated appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*. Dr. Koehler noted his application of the net adjustment formula and concluded that appellant had five percent permanent impairment of the right lower extremity.

On November 15, 2021 Dr. Katz, OWCP's DMA, reviewed Dr. Koehler's October 25, 2021 report. He found that, under the A.M.A., *Guides* and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), appellant had five percent permanent impairment of the right lower extremity due to mild motor deficit from L4. Dr. Katz also noted that appellant had no sensory deficit of the right lower extremity, and no sensory or motor deficit of the left lower extremity. He related that appellant's five percent permanent impairment rating represented appellant's total current permanent impairment of the affected members, and included any prior percentage awarded. Dr. Katz concluded that since the current impairment rating did not exceed the prior, overlapping award of 30 percent permanent impairment of the right lower extremity, there was no additional award due for permanent impairment of appellant's right lower extremity.

By decision dated November 29, 2021, OWCP denied appellant's request for an increased schedule award, finding that appellant had only five percent permanent impairment of the right lower extremity and zero percent permanent impairment of the left lower extremity. It accorded the weight of the medical opinion evidence to the October 25, 2021 second opinion of Dr. Koehler, and the November 15, 2021 opinion of the DMA, Dr. Katz.

On August 2, 2022 appellant requested reconsideration and submitted additional evidence, including an April 26, 2022 nerve conduction velocity/electromyography (NCV/EMG) report, and progress reports from Dr. Chmell dated February 10 through October 27, 2022. She also resubmitted Dr. Chmell's December 6, 2019 report.

By decision dated October 28, 2022, OWCP denied modification of its November 29, 2021 decision.

On December 19, 2022 appellant requested reconsideration.

Appellant submitted a December 8, 2022 progress report, wherein Dr. Chmell diagnosed several conditions, including lumbar disc herniation and aggravation of degenerative disc disease of the lumbar spine. Dr. Chmell noted appellant's physical examination findings and the results of an October 6, 2022 lumbar spine MRI scan, which demonstrated that L4-5 disc herniation had worsened and the lumbar disc bulges were unchanged.

By decision dated January 4, 2023, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board and, by decision dated October 13, 2023,<sup>7</sup> the Board affirmed the January 4, 2023 decision.

On December 30, 2024 and January 31, 2025 appellant filed additional claims for an increased schedule award.

OWCP received progress reports from Dr. Chmell dated January 16 and February 27, 2025. Dr. Chmell noted physical examination findings and diagnosed several conditions, including lumbar intervertebral disc displacement and aggravation of degenerative disc disease of the lumbar spine. He also provided the results of a July 13, 2024 lumbar MRI scan, which he found demonstrated deterioration of the L4-5 disc protrusion with facet hypertrophy resulting in severe foraminal stenosis.

On February 27, 2025 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Steven Milos, a Board-certified orthopedic surgeon, for a second opinion examination and permanent impairment evaluation.

In an April 11, 2025 report, Dr. Milos discussed appellant's factual and medical history, including her accepted employment conditions and receipt of medical treatment. He reported findings of his physical examination, noting that examination of both lower extremities revealed intact sensation throughout all the dermatomal distribution in both lower extremities and negative straight leg raise bilaterally. Dr. Milos also reported 5/5 strength with manual testing in all muscle groups in both lower extremities with 2+ dorsalis pedis and posterior tibial pulses. He provided an impression of lumbar spondylosis and opined that appellant had reached MMI. Dr. Milos indicated, that an impairment evaluation value of the lower extremities could not be assessed as she did not have any focal muscle or sensory deficits or any component of radiculopathy. Therefore, he opined that, pursuant to the A.M.A., *Guides*, appellant had no permanent impairment of the right and left lower extremities based on the lumbar diagnosis.

OWCP received April 24 and June 5, 2025 progress reports from Dr. Chmell reiterating his findings and diagnoses.

On May 8, 2025 OWCP referred the claim to Dr. Arthur Harris, a Board-certified orthopedic surgeon serving as OWCP's DMA, to provide an impairment rating in conformity with the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*. In a May 17, 2025 report, Dr. Harris reviewed appellant's history of injury, noted her accepted conditions and his review of Dr. Milos' April 11, 2025 report. He opined that appellant reached MMI on April 11, 2025, the

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<sup>7</sup> Docket No. 23-0789 (issued October 13, 2023).

date of Dr. Milos' impairment evaluation. For the right and the left lower extremities, Dr. Harris found that, under the diagnosis-based impairment (DBI) methodology, appellant had a Class 0 placement under Table 2 of *The Guides Newsletter*, as she did not have any neurologic deficit causing sensory or motor loss in the lower extremities. This resulted in zero percent permanent impairment for the right and left lower extremities. Dr. Harris also explained that the range of motion (ROM) rating methodology was not applicable as it was not permitted as an alternative rating methodology for appellant's condition under the A.M.A., *Guides*.

By decision dated June 20, 2025, OWCP denied appellant's claim for increased schedule award compensation. It accorded the weight of the medical opinion evidence to the April 11, 2025 second opinion of Dr. Milos, and the May 17, 2025 opinion of the DMA, Dr. Harris.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>8</sup> and its implementing regulations<sup>9</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>10</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>11</sup> The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.<sup>12</sup>

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.<sup>13</sup> Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the class of diagnosis (CDX), which is then adjusted by a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPE), and/or a grade modifier for clinical studies (GMCS).<sup>14</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>15</sup> Evaluators are directed to

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<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404.

<sup>10</sup> *Id.*; see *J.M.*, Docket No. 25-0212 (issued May 1, 2025); *A.D.*, Docket No. 20-0553 (issued April 19, 2021); see also *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

<sup>11</sup> 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).

<sup>12</sup> See *J.M.*, *id.*; *D.C.*, Docket No. 20-1655 (issued August 9, 2021); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>13</sup> A.M.A., *Guides*, page 3, section 1.3.

<sup>14</sup> *Id.* at 493-556.

<sup>15</sup> *Id.* at 521.

provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>16</sup>

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.<sup>17</sup> Furthermore, the back is specifically excluded from the definition of an organ under FECA.<sup>18</sup> 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 edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures provide that the July/August 2009 edition of *The Guides Newsletter* is to be applied.<sup>19</sup>

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

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater permanent impairment than that for which she previously received schedule award compensation.

In accordance with its procedures, OWCP properly referred appellant, along with a SOAF, the case record, and a series of questions to Dr. Milos for a second opinion examination and permanent impairment evaluation. In his April 11, 2025 report, Dr. Milos noted there were no neurologic deficit findings consistent with lumbar radiculopathy. Thus, he opined, pursuant to the A.M.A., *Guides*, that appellant had no impairment of the right and left lower extremities based on the lumbar diagnosis. On May 17, 2025 Dr. Harris, OWCP's DMA, reviewed the April 11, 2025 report from Dr. Milos. He opined that MMI was reached on April 11, 2025, the date of Dr. Milos' examination. Utilizing the DBI impairment methodology, Dr. Harris referenced Table 2 of *The Guides Newsletter* and determined, for the right and left lower extremities, that since she did not have any neurologic deficit causing sensory or motor loss, she had a Class 0 placement which resulted in zero percent lower extremity permanent impairment. Dr. Harris also found that the A.M.A., *Guides* did not allow for an impairment rating to be calculated under the ROM methodology. The Board finds that Dr. Milos and the DMA, Dr. Harris, correctly applied the A.M.A., *Guides* and *The Guides Newsletter* to find that appellant had zero percent permanent

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<sup>16</sup> *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>17</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see D.S.*, Docket No. 24-0870 (issued October 23, 2024); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>18</sup> *See id.* at § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

<sup>19</sup> *Supra* note 11 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

<sup>20</sup> *Id.* at Chapter 2.808.6(f) (March 2017); *see K.P.*, Docket No. 25-0278 (issued March 7, 2025).

impairment of the lower extremities due to her accepted lumbar injuries.<sup>21</sup> As the reports of Dr. Milos and Dr. Harris are detailed, well rationalized, and based on a proper factual background, their opinions represent the weight of the medical evidence.<sup>22</sup>

As the medical evidence of record is insufficient to establish permanent impairment of the lower extremities, warranting increased schedule award compensation, the Board finds that appellant has not met her burden of proof.

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

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish greater permanent impairment than that for which she previously received schedule award compensation.

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<sup>21</sup> See *T.T.*, Docket No. 24-0079 (issued April 1, 2024); *C.T.*, Docket No. 22-0822 (issued November 29, 2022); *T.B.*, Docket No. 20-0642 (issued September 30, 2020).

<sup>22</sup> *T.T.*, *id.*; *T.M.*, Docket No. 21-0677 (issued March 31, 2023); *V.S.*, Docket No. 19-1679 (issued July 8, 2020); *T.F.*, Docket No. 19-157 (issued April 21, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 20, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 28, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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