

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

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C.C., Appellant )  
and ) Docket No. 25-0865  
DEPARTMENT OF HOMELAND SECURITY, )  
FEDERAL PROTECTIVE SERVICE, )  
Fort Snelling, MN, Employer )  
Issued: December 23, 2025

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*Appearances:*

*Allen R. Webb, Esq.*, for the appellant<sup>1</sup>  
*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  
JANICE B. ASKIN, Judge

**JURISDICTION**

On September 11, 2025 appellant, through counsel, filed a timely appeal from a March 26, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

## **FACTUAL HISTORY**

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

On February 16, 2016 appellant, then a 45-year-old supervisory law enforcement specialist area commander, filed a traumatic injury claim (Form CA-1) alleging that, on February 9, 2016, she sustained bilateral neck and shoulder injuries when conducting ground defense maneuvers during refresher training while in the performance of duty. She stopped work on February 16, 2016. OWCP accepted the claim for strain of muscle, fascia, and tendon at neck level, initial encounter.<sup>4</sup> It paid appellant wage-loss compensation on the supplemental rolls effective June 13, 2016 and on the periodic rolls from December 11, 2016 until October 13, 2018.<sup>5</sup>

On April 17, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Robert Wengler, Board-certified in orthopedic surgery, for a second opinion examination.

In a September 26, 2019 report, Dr. Wengler noted appellant's history of injury and medical treatment. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>6</sup> and opined that appellant had 37 percent cervical spine impairment, pursuant to the Cervical Spine Regional grid, Table 17-2, page 564. Dr. Wengler indicated that he suspected pathology at C6-7 that should be evaluated with a magnetic resonance imaging (MRI) scan of the cervical spine and that the fusion should be extended if the scan revealed pathology at C6-7.

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<sup>3</sup> Docket No. 24-0951 (issued November 12, 2024).

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxxx092. Appellant also filed a Form CA-1 alleging that on September 12, 2016, during the same refresher training, she sustained further injury to her cervical spine when she was tackled to the ground from a standing position. OWCP assigned that claim OWCP File No. xxxxxxx854 and accepted it for cervical disc herniation with radiculopathy at C5-6. OWCP has administratively combined OWCP File Nos. xxxxxxx854 and xxxxxxx092, with the latter serving as the master file.

<sup>5</sup> Appellant underwent right C5-6 foraminotomy and decompression, partial discectomy, and decompression of the C5 nerve root on January 27, 2014. She later underwent an anterior cervical discectomy with revision decompression on January 24, 2017 for recurrent C5-6 disc herniation with radiculopathy. Appellant retired from federal service on October 13, 2018.

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

On December 9, 2019 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, serving as OWCP's district medical advisor (DMA), reviewed Dr. Wengler's September 26, 2019 report and noted that Dr. Wengler had not rated appellant's permanent impairment pursuant to *The Guides Newsletter, Rating Spinal Nerve Impairment Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*).

In a supplemental report dated June 8, 2020, Dr. Wengler again noted appellant's examination findings.

On June 25, 2020 the DMA, Dr. Harris, reviewed Dr. Wengler's June 8, 2020 report. He concluded that appellant did not have any neurologic deficit of the upper extremities consistent with cervical radiculopathy, which could be rated under *The Guides Newsletter*.

By decision dated July 9, 2020, OWCP denied appellant's schedule award claim.

On July 20, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated August 27, 2020, OWCP's hearing representative vacated the July 9, 2020 decision and remanded the case for OWCP to obtain a supplemental report from Dr. Wengler.

In a supplemental report dated February 4, 2021, Dr. Wengler opined that appellant's clinical presentation as of September 26, 2019 justified consideration of further surgery, including a fusion at C6-7. He also opined that she had not reached maximum medical improvement (MMI) and recommended a repeat cervical MRI scan and possibly a discogram.

By decision dated April 19, 2021, OWCP expanded the acceptance of the claim to include cervical disc disorder at C6-7 level with radiculopathy. In a separate decision dated April 19, 2021, it advised appellant that the medical evidence of record was insufficient to establish that she was at MMI, and no further action would be taken on the schedule award claim.

On October 20, 2022 OWCP referred appellant for a second opinion examination with Dr. Paul Cederberg, Board-certified in orthopedic surgery.

In a report dated November 14, 2022, Dr. Cederberg related appellant's physical examination findings. He noted that she had right C6 radiculopathy but opined that the herniated disc at C6-7 was not causally related to the employment injury. Dr. Cederberg concluded that appellant did not have measurable permanent impairment of either of her upper extremities.

OWCP referred Dr. Cederberg's report to Dr. Harris, the DMA. In a January 4, 2023 report, Dr. Harris concurred with Dr. Cederberg and opined that appellant did not have upper extremity impairment, which could be rated under *The Guides Newsletter*.

By *de novo* decision dated March 1, 2023, OWCP denied appellant's schedule award claim.

On March 26, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated August 8, 2023, OWCP's hearing representative vacated the March 1, 2023 decision, finding that the case was not in posture for a hearing as neither Dr. Cederberg, the second opinion physician, nor Dr. Harris, the DMA, adhered to the SOAF. The case was remanded for further development.

On August 28, 2023 OWCP referred appellant, along with the case record and an updated SOAF, to Dr. Wengler for a second opinion examination.

In an October 23, 2023 report, Dr. Wengler reviewed the medical record and SOAF. He performed a physical examination and noted that there had been a dramatic change in appellant's neurologic examination since he saw her in 2019. Dr. Wengler observed new findings of markedly hyperactive reflexes in both arms and positive Hoffmann's signs bilaterally, which he opined necessitated surgical intervention.

On November 16, 2023 OWCP forwarded a copy of Dr. Wengler's report to Dr. Harris, the DMA, for review.

In a report dated January 5, 2024, Dr. Harris, the DMA, noted that Dr. Wengler's October 23, 2023 physical examination showed no objective findings of neurologic deficit in the upper extremities resulting from possible cervical myelomalacia/cervical myelopathy. The DMA concluded that the evidence of record therefore did not establish appellant's entitlement to a schedule award.

By *de novo* decision dated January 31, 2024, OWCP denied appellant's schedule award claim. It found that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On April 5, 2024 appellant, through counsel, requested reconsideration. In support thereof, she submitted a March 13, 2024 supplemental report by Dr. Wengler.

On April 15, 2024 OWCP authorized an updated cervical MRI scan, which was completed on June 26, 2024. The scan revealed a stable fusion at C5-6 and new adjacent segment disease with disc herniations causing cord compression at C4-5 and C6-7.

In a June 26, 2024 report, Dr. Wengler reviewed the June 26, 2024 MRI scan, and opined that appellant had a caudally directed right central disc herniation at C6-7 that was flattening the right ventral hemi cord. He indicated that she was in need of decompression and interbody fusion or disc replacement.

By decision dated July 3, 2024, OWCP modified the January 31, 2024 decision "from a denial based on 0 percent upper extremity impairment to a denial based upon maximum medical improvement (MMI) has not been met; however, the case remain[ed] denied for insufficient evidence to meet all elements for FECA coverage."

On July 28, 2024 appellant, through counsel, requested reconsideration. In support thereof, she submitted a July 8, 2024 supplemental report by Dr. Wengler, who opined that appellant had reached MMI, as he did not expect her condition to improve. Dr. Wengler advised that she may end up with a resection leaving her paralyzed or worse.

In an August 8, 2024 report, Dr. Harris, the DMA, applied *The Guides Newsletter* to Dr. Wengler's October 23, 2023 physical examination findings and opined that appellant had no ratable upper extremity impairment for cervical radiculopathy. He noted that the date of MMI was July 8, 2024.

By decision dated August 29, 2024, OWCP modified its prior decision to find that appellant's accepted medical conditions had reached MMI; however, the claim remained denied as the medical evidence of record was insufficient to establish entitlement to a schedule award in accordance with the A.M.A., *Guides*.

On September 30, 2024 appellant, through counsel, appealed to the Board. By decision dated November 12, 2024, the Board affirmed OWCP's August 29, 2024 decision.<sup>7</sup>

OWCP continued to receive evidence. In a December 2, 2024 medical report, Dr. Wengler performed a physical examination and observed muscle spasm and markedly limited range of motion (ROM) in the cervical spine; reproducible neck pain with radiation to both arms; localized tenderness over the middle cervical segments; persistent bilateral Hoffman's signs; hyperreflexia of the radial periosteal and biceps tendon and triceps; decreased sensation over the 4<sup>th</sup> and 5<sup>th</sup> fingers of both hands and ulnar aspects of both forearms; weakness in both hands using the Jamar dynamometer; and no measurable atrophy of the upper extremities. He again advised her of his concern regarding the potential of a devastating spinal cord compromise and urged her to expedite arrangements for surgical attention.

In a permanent impairment evaluation report dated December 2, 2024, Dr. Wengler referenced Table 15-14 (Sensory and Motor Severity), page 425, of the sixth edition of the A.M.A., *Guides* and indicated that appellant's physical examination findings of bilateral sensory loss and motor weakness in the C7 and C8 nerve distribution corresponded with a severity of level of 2 for moderate sensory loss and severity 1 for mild motor deficits. Utilizing Table 15-21, page 443, he found six percent upper extremity impairment in each arm for a moderate sensory loss involving the ulnar nerve below the mid-forearm and a nine percent upper extremity impairment in each arm for mild motor deficit below the forearm. Dr. Wengler referenced the A.M.A., *Guides* at Table 17-2 and found a Class 4 impairment due to intervertebral disc herniation with residual bilateral multiple-level radiculopathy at clinically appropriate levels. He opined that appellant had 25 to 30 percent whole person impairment and recommended an expedited surgical consultation to address significant spinal cord impingement at C4-5 and C6-7.

On January 6 and February 21, 2025 appellant filed CA-7 forms for a schedule award.

In a report dated March 7, 2025, Dr. Harris, the DMA, noted that Dr. Wengler's December 2, 2024 physical examination revealed new findings of impaired sensation and weakness in the bilateral C7 and C8 distributions as compared to Dr. Wengler's October 23, 2023 examination. He noted that he was "unable to explain this discrepancy." Dr. Harris indicated that his opinion as stated in his prior August 8, 2024 report remained unchanged, and that appellant had no ratable impairment of the upper extremities based on the methodology to rate spinal nerve

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<sup>7</sup> *Supra* note 3.

impairments as outlined in *The Guides Newsletter*. He also noted that the date of MMI remained July 8, 2024.

By decision dated March 26, 2025, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish entitlement to a schedule award in accordance with the A.M.A., *Guides*.

### **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, 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.<sup>10</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<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>

Neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.<sup>13</sup> However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.<sup>14</sup> The sixth edition of the A.M.A., *Guides* (2009) provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*. It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the Federal (FECA) Procedure Manual.<sup>15</sup>

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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 also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

<sup>12</sup> *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>13</sup> *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).

<sup>14</sup> *Supra* note 11 at Chapter 2.808.5c(3) (March 2017).

<sup>15</sup> *Supra* note 11 at Chapter 3.700, Exhibit 4 (January 2010); see *L.H.*, Docket No. 20-1550 (issued April 13, 2021); *N.G.*, Docket No. 20-0557 (issued January 5, 2021).

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>16</sup>

## ANALYSIS

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

In a December 2, 2024 medical report, Dr. Wengler compared his physical examination findings on October 23, 2023 to his physical examination findings on December 2, 2024. He observed that the December 2, 2024 physical examination revealed new findings of decreased sensation over the 4<sup>th</sup> and 5<sup>th</sup> fingers of both hands and ulnar aspects of both forearms and weakness in both hands. In his permanent impairment evaluation report of even date, Dr. Wengler indicated that the December 2, 2024 physical examination findings were consistent with motor and sensory loss in the C7 and C8 distributions in the bilateral upper extremities, warranting a schedule award under the sixth edition of the A.M.A., *Guides*.

In a report dated March 7, 2025, Dr. Harris, the DMA, noted that Dr. Wengler's December 2, 2024 physical examination revealed new findings of impaired sensation and weakness in the bilateral C7 and C8 distributions as compared to Dr. Wengler's October 23, 2023 examination. He did not, however, apply the sixth edition of the A.M.A., *Guides* to Dr. Wengler's December 2, 2024 physical examination findings. Rather, Dr. Harris merely indicated that his opinions, as stated in his prior August 8, 2024 report, which were based upon Dr. Wengler's October 23, 2023 physical examination findings, remained unchanged.

OWCP procedure provides that as long as the DMA explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides*, and considers each of the reported findings of impairment, his or her opinion may constitute the weight. However, it must ensure that the DMA properly considers all reported findings.<sup>17</sup> The Board has held that, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>18</sup> Once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.<sup>19</sup>

Accordingly, the case must therefore be remanded for further development. On remand, OWCP shall refer appellant, along with the medical record, an updated SOAF, and a series of questions, to a new specialist in the appropriate field of medicine for a second opinion as to whether the accepted employment conditions resulted in any permanent impairment of a scheduled member or function of the body according to the sixth edition of the A.M.A., *Guides* and *The Guides*

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<sup>16</sup> See *supra* note 11 at Chapter 2.808.6f (February 2013). See also *J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

<sup>17</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, at Chapter 2.810.8(j) (September 2010).

<sup>18</sup> See *D.V.*, Docket No. 17-1590 (issued December 12, 2018); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

<sup>19</sup> See *A.K.*, Docket No. 18-0462 (issued June 19, 2018); *Robert F. Hart*, 36 ECAB 186 (1984).

*Newsletter*. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2025 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 23, 2025  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board