United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 25-0335**
	)	**Issued: July 9, 2025**
U.S. POSTAL SERVICE, ENERGY CENTER STATION, Lafayette, LA, Employer	)	

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 February 18, 2025 appellant filed a timely appeal from a November 5, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than two percent permanent impairment of her right upper extremity, and/or two percent permanent

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the November 5, 2024 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*.

impairment of her left upper extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

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

On December 8, 2003 appellant, then a 33-year-old part-time regular clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2003 she injured her head, right shoulder, and body when she slipped and fell while in the performance of duty. OWCP accepted the claim for open wound of the scalp, without complication; right shoulder contusion; lumbar sprain; neck sprain; post-concussion syndrome; and convulsions (post-traumatic seizure disorder). It paid appellant wage-loss compensation on the supplemental rolls, effective January 12, 2004, and on the periodic rolls, effective January 25, 2004.

On July 5, 2016 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a July 22, 2016 development letter, OWCP informed appellant of the deficiencies of her schedule award claim. It advised her of the type of medical evidence necessary to establish her claim, including a permanent impairment rating from her treating physician utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).[4] OWCP afforded appellant 30 days to submit the necessary evidence.

On May 19, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Gordan Gidman, a Board-certified orthopedic surgeon, for a second opinion examination.

In a June 13, 2023 report, Dr. Gidman recounted appellant's history of injury. He noted appellant's current symptoms of lumbar pain, which included throbbing, tingling, and stabbing pain, as well as numbness. Appellant's shoulder symptoms radiated down her arms. She also experienced cervical symptoms. Dr. Gidman related that appellant had some loss of range of motion (ROM) of both shoulders. Appellant displayed inconsistent testing on the lumbar spine with pain to light palpation of the skin and inconsistent straight leg raising, therefore he could not explain her symptoms to the lumbar spine. Concerning her neck, shoulders, and lower back, Dr. Gidman opined that she contused all three areas in her fall. He provided a single set of measurements for ROM of both shoulders. For the lumbar spine, Dr. Gidman utilized the A.M.A., *Guides* and explained that a soft tissue nonspecific condition would equate to three percent permanent whole-body impairment. For the neck and shoulders, he referred to the shoulder regional grid and opined that appellant had a shoulder contusion or crush injury, which equated to

[3] Docket No. 24-0453 (issued June 4, 2024); Docket No. 14-644 (issued June 10, 2014); Docket No. 13-526 (issued June 7, 2013); *Order Remanding Case,* Docket No. 12-197 (issued June 12, 2012).

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

three percent permanent upper extremity impairment or two percent permanent whole-body impairment. Dr. Gidman combined the lumbar and shoulder impairments and opined that appellant had five percent permanent whole-body impairment. He opined that appellant had reached maximum medical improvement (MMI) for her cervical and lumbar sprains and her bilateral shoulder contusions.

On August 28, 2023 OWCP referred Dr. Gidman's report to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA).

In a report dated September 27, 2023, Dr. Hammel reviewed Dr. Gidman's report and noted that there were no spinal nerve impairments from her accepted cervical and lumbar conditions to qualify upper or lower extremity-based ratings in accordance with the A.M.A., *Guides* and *The Guides Newsletter*, *Rating Spinal Nerve Extremity Impairment* (July/August 2009) (*The Guides Newsletter*).[5] He also noted that the ROM of the shoulders could not be calculated due to lack of triplicate measurements. Dr. Hammel referred to the A.M.A., *Guides*, Table 15-5, page 401, Shoulder Regional Grid: Upper Extremity Impairments, and noted that the class of diagnosis (CDX) for a shoulder contusion or crush injury was a Class 1 impairment, which had a default rating of two percent. He applied a grade modifier for functional history (GMFH) of 1 for continued pain and a grade modifier for physical examination (GMPE) of 2 for mild motion loss. Dr. Hammel further noted that a grade modifier for clinical studies (GMCS) was not applicable. He concluded that appellant had two percent permanent impairment of the upper extremities due to her shoulder contusions. Dr. Hammel indicated that MMI was reached on June 13, 2023, the date of Dr. Gidman's examination.

By decision dated November 21, 2023, OWCP granted appellant a schedule award for two percent permanent impairment of the right upper extremity and two percent permanent impairment of the left upper extremity. The period of the award ran for 12.48 weeks from June 13 through September 8, 2023.

On March 27, 2024 appellant appealed to the Board. By decision dated June 4, 2024, the Board set aside the November 21, 2023 decision and remanded the case for further medical development. The Board instructed OWCP to refer appellant back to the second opinion physician Dr. Gidman to provide three sets of ROM measurements for appellant's shoulders and an impairment rating based on both diagnosis-based impairment (DBI) and ROM methods. OWCP was to then refer the case to the DMA for review, followed by a *de novo* decision regarding appellant's permanent impairment of the right and left upper extremities.

On July 29, 2024 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Gidman for a supplemental second opinion examination.

In an August 22, 2024 report, Dr. Gidman noted appellant's current symptoms of lumbar pain and shoulder symptoms radiating down her arms. On physical examination of the cervical spine and upper extremities, he noted intact sensory examination, no atrophy, no fasciculations,

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a. (March 2017); Part 3 -- Medical, *Schedule Awards,* Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4 of Chapter 3.700.

full active range of motion of the shoulders, and no crepitation of the shoulders. On physical examination of the lumbar spine and lower extremities, Dr. Gidman further noted normal gait, normal lordosis, intact motor and sensory examination, inconsistent testing on the lumbar spine with pain to light palpation of the skin and inconsistent straight leg raising. He noted x-rays of the cervical spine were normal with no evidence of advanced degenerative changes or instability. X-rays of the lumbar spine were also normal. Dr. Gidman noted that appellant had a normal examination. He noted that appellant's lumbar examination demonstrated some inconsistencies, which may indicate evidence of psychological or psychosocial factors affecting subjective complaints. Dr. Gidman did not identify any objective findings correlating with subjective complaints. For the lumbar spine, he utilized the A.M.A., *Guides* lumbar spine regional grid, for soft tissue nonspecific conditions, a Class 1 equating to a three percent whole-body impairment. With regard to appellant's cervical spine and shoulder symptoms, using the regional spine grid for the cervical spine, for a soft tissue nonspecific condition of the cervical spine, she would be Class 1, equating to a three percent whole person impairment. He combined the cervical and lumbar spine calculations, finding she would be Class 1, equating to a three percent whole person impairment, resulting in combined six percent whole person impairment. Dr. Gidman advised that appellant had reached MMI concerning her cervical, lumbar, and shoulder conditions. He noted that the impairment rating was based on appellant's unremarkable examination normal x-rays, and intact neurological examination.

In a September 24, 2024 addendum, Dr. Gidman clarified that appellant did not have a spinal nerve injury, noting that appellant's motor and sensory examination were normal. Therefore, using *The Guides Newsletter,* he concluded that there was no permanent impairment assignable to the cervical and lumbar area.

On October 23, 2024 OWCP referred Dr. Gidman's report to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP DMA.

In a report dated October 29, 2024, Dr. Katz reviewed Dr. Gidman's report and noted that there were no spinal nerve impairments from her accepted cervical and lumbar conditions to qualify upper or lower extremity-based ratings in accordance with the A.M.A., *Guides* and *The Guides Newsletter*.[6] He found that Dr. Gidman's August 22, 2024 impairment evaluation could not be considered probative for schedule award purposes under FECA, because FECA did not allow a schedule award for the spine, nor did it recognize whole person impairment. Dr. Katz noted that a diagnosed injury originating in the spine may be considered only to the extent that it results in permanent impairment of the extremities. Referring to Dr. Gidman's September 24, 2024 findings on physical examination. Dr. Katz noted that there was no ratable impairment of any spinal nerve and no ratable impairments under FECA for the spinal conditions. Using Proposed Table One for spinal nerve impairment resulting in upper extremity impairment, he noted no motor deficit for spinal nerves C5-C8 and T1, resulting in a Class 0 impairment for both upper extremities with a default value of zero and no net adjustment. Dr. Katz found that there was no permanent impairment. As such, he calculated zero percent permanent impairment of the right and left lower extremities and right and left upper extremities.

[6] *Id*.

By decision dated November 5, 2024, OWCP denied appellant's schedule award claim, finding that she had not met her burden of proof to establish increased permanent impairment.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] and its implementing regulations[8] 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. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.[9] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.[10]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must identify the impairment CDX, which is then adjusted by a GMFH, a GMPE, and/or a GMCS.[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids, and calculations of modifier scores.[13]

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology *versus* the ROM methodology for rating of upper extremity impairments.[14] Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

> "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).

[7] *Supra* note 1.

[8] 20 C.F.R. § 10.404.

[9] *Id.* at § 10.404(a); *see R.M.,* Docket No. 20-1278 (issued May 4, 2022); *see also Jacqueline S. Harris,* 54 ECAB 139 (2002).

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

[11] A.M.A., *Guides* 383-492; *see M.P.,* Docket No. 13-2087 (issued April 8, 2014).

[12] A.M.A., *Guides* 411.

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

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

> "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*."[15] (Emphasis in the original.)
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> The Bulletin further advises:
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> "If the medical evidence of record is not sufficient for the DMA to render a rating on ROM where allowed, the DMA should advise as to the medical evidence necessary to complete the rating. However, the DMA should still render an impairment rating using the DBI method, if possible, given the available evidence."

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.[16] However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.[17] The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*. 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.[18] In addressing upper or lower extremity impairment due to peripheral or spinal nerve root involvement, the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* require identifying the impairment CDX, which is then adjusted by the GMFH and the GMCS. The effective net adjustment formula is (GMFH - CDX) + (GMCS - CDX).[19]

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.[20]

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[15] *Id.*

[16] 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).

[17] *Supra* note 10 at Chapter 2.808.5c(3) (February 2022).

[18] *Id.* 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).

[19] *G.W.,* Docket No. 22-0301 (issued July 25, 2022); *see also The Guides Newsletter*; A.M.A., *Guides* 430.

[20] *See supra* note 10 at Chapter 2.808.6f (March 2017).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than two percent permanent impairment of her right upper extremity, and/or two percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

In a supplemental report dated September 24, 2024, Dr. Gidman reviewed *The Guides Newsletter* and opined that appellant did not have a spinal nerve injury as appellant's motor and sensory examination was normal. He applied *The Guides Newsletter* to find that no impairment would be assigned to the cervical and lumbar area. Dr. Gidman advised that appellant had reached MMI.

In accordance with its procedures, OWCP properly referred the evidence of record to its DMA, Dr. Katz. Dr. Katz noted that FECA does not allow a schedule award for the spine, nor does it recognize whole person permanent impairment. Using Proposed Table One for spinal nerve impairment resulting in upper extremity impairment, he noted no motor deficit for spinal nerves C5-C8 and T1, resulting in a Class 0 impairment for both upper extremities with a default value of zero and no net adjustment. Dr. Katz noted that there was no permanent impairment of any spinal nerve and no ratable impairments under FECA for the spinal conditions. As such, he calculated zero percent permanent impairment of the right and left upper extremities.

The Board finds that Dr. Katz applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* to the clinical findings of Dr. Gidman. Dr. Katz appropriately explained that Dr. Gidman's August 22, 2024 rating was improperly based on whole person impairment and that FECA does not allow a schedule award for the spine. He further noted that clinical findings for the upper and lower extremities had been normal. The Board thus finds that Dr. Katz properly determined that appellant had zero percent permanent impairment of the upper extremities.[21]

As the medical evidence of record is insufficient to establish greater than two percent permanent impairment of her right upper extremity and/or two percent permanent impairment of her left upper extremity, 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 than two percent permanent impairment of her right upper extremity, and/or two percent permanent

[21] *See Veronica Williams,* 56 ECAB 367 (2005).

impairment of her left upper extremity, for which she previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 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