

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

D.D., Appellant)
and) Docket No. 25-0577
U.S. POSTAL SERVICE, KANSAS CITY MAIN)
POST OFFICE, Kansas City, MO, Employer)
Issued: July 7, 2025
)

Appearances:

Case Submitted on the Record

Appellant, pro se

Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 24, 2025 appellant filed a timely appeal from a March 13, 2025 merit decision and an April 24, 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish greater than 28 percent permanent impairment of each upper extremity (arms), for which he previously received schedule award compensation; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 15, 1999 appellant, then a 40-year-old mechanic helper, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 1999 he injured his cervical spine when he reached overhead to pull down an air hose from a reel and felt a pop in his neck and upper back while in the performance of duty.³ He stopped work on February 1, 1999. OWCP accepted appellant's claim for herniated disc at C5-6. It paid him wage-loss compensation on the periodic rolls, effective July 3, 1999. On August 16, 1999 appellant returned to part-time, modified-duty work for four hours per day.

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

By decision dated May 12, 2000, OWCP granted appellant a schedule award for two percent permanent impairment of each lower extremity. The award ran for 11.52 weeks from September 18 through December 7, 1999. By separate decision dated May 12, 2000, OWCP granted appellant a schedule award for two percent permanent impairment of the right upper extremity. The award ran for 6.24 weeks from April 28 through June 11, 2000.

On December 21, 2022 appellant filed a Form CA-7 for an additional schedule award.

On January 17, 2023 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Kala Danushkodi, a Board-certified physiatrist, for a second opinion examination. It requested that Dr. Danushkodi provide a permanent impairment rating in conformity with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁴ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*).

² Docket No. 24-0203 (issued May 2, 2024); Docket No. 24-0890 (issued October 21, 2024).

³ OWCP assigned the present claim OWCP File No. xxxxxx008. Appellant has several previously accepted traumatic injury claims. Under OWCP File No. xxxxxx946, OWCP accepted that he sustained a lumbar strain and lumbar disc herniation, which required surgery, causally related to an October 15, 1990 employment injury. Under OWCP File No. xxxxxx780, it accepted that appellant sustained a lumbar strain causally related to an August 14, 1991 employment injury. Under OWCP File No. xxxxxx742, OWCP accepted that he sustained a recurrent herniated disc at L4-5 causally related to a September 16, 1991 employment injury. Under OWCP File No. xxxxxx006, it accepted that appellant sustained a lumbar strain causally related to a September 22, 1997 employment injury. Under OWCP File No. xxxxxx727, OWCP accepted his claim for lumbar strain causally related to a September 15, 1998 employment injury. Under OWCP File No. xxxxxx678, appellant also filed a traumatic injury claim on September 16, 1998, alleging that on that date he experienced back pain while in the performance of duty. However, by decision dated October 30, 1998, OWCP denied his claim. OWCP has administratively combined OWCP File Nos. xxxxxx008, xxxxxx946, xxxxxx780, xxxxxx006, xxxxxx727, xxxxxx678, and xxxxxx742, with the latter designated as the master file.

⁴ A.M.A., *Guides* (6th ed. 2009).

In a January 31, 2023 report, Dr. Danushkodi determined that appellant had 22 percent permanent impairment of each lower extremity. OWCP undertook further development, including referring the case to Dr. Kenechukwu Ugokwe, a Board-certified neurosurgeon in his capacity as an OWCP district medical adviser (DMA). In an April 5, 2023 report, Dr. Ugokwe determined that appellant had 11 percent permanent impairment of each lower extremity.

After additional development, OWCP issued a November 14, 2023 decision granting appellant a schedule award for an additional 9 percent permanent impairment of each lower extremity, thereby compensating him for a total of 11 percent permanent impairment of each lower extremity. The award ran for 51.84 weeks from January 31, 2023 through January 28, 2024. By decision dated December 18, 2023, OWCP denied modification of the November 14, 2023 decision. Appellant appealed to the Board and, by decision dated May 2, 2024,⁵ the Board set aside OWCP's November 14 and December 18, 2023 decisions and remanded the case for further development.

On remand OWCP requested clarification from Dr. Danushkodi regarding appellant's permanent impairment. In a May 23, 2024 supplemental report, Dr. Danushkodi found that appellant had a total of 22 percent permanent impairment of the right lower extremity and 11 percent permanent impairment of the left lower extremity under the standards of the sixth edition of the A.M.A., *Guides*. With respect to the permanent impairment of appellant's upper extremities, she noted, without elaboration, "Cervical Spine 0% [upper extremity impairment] no neurological deficit." On June 24, 2024 OWCP requested that Dr. William Tontz, Jr., a Board-certified orthopedic surgeon serving as a DMA, review Dr. Danushkodi's impairment rating. In a July 16, 2024 report, Dr. Tontz indicated that he agreed with Dr. Danushkodi's assessment of the permanent impairment of appellant's lower extremities, but he noted that the permanent impairment of appellant's upper extremities should be addressed in a future evaluation.

By decision dated July 23, 2024, OWCP granted appellant a schedule award for an additional 11 percent permanent impairment of the right lower extremity, thereby compensating him for a total of 22 percent permanent impairment of the right lower extremity and 11 percent permanent impairment of the left lower extremity.

On July 29, 2024 appellant requested reconsideration of the July 23, 2024 decision and argued that he was entitled to additional schedule award compensation. By decision dated August 22, 2024, OWCP denied modification of its July 23, 2024 decision. On August 25, 2024 appellant requested reconsideration of the August 22, 2024 decision and submitted additional argument. By decision dated August 28, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a). Appellant appealed to the Board and, by decision dated October 21, 2024, the Board affirmed OWCP's July 23 and August 22 and 28, 2023 decisions.⁶

OWCP again referred appellant, along with the case record, a SOAF, and a series of questions, to Dr. Danushkodi for a second opinion examination. It requested that she provide a

⁵ Docket No. 24-0203 (issued May 2, 2024).

⁶ Docket No. 24-0890 (issued October 21, 2024).

permanent impairment rating of appellant's upper extremities in conformity with the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.

In an August 29, 2024 report, Dr. Danushkodi discussed appellant's factual and medical history, noting that diagnostic testing demonstrated degenerative disc changes from C3 through C7 of the cervical spine. She indicated that appellant reported he had pain, which radiated from his neck to his upper extremities, with tingling in the three medial fingers of each hand, and that he frequently dropped items due to upper extremity weakness. Dr. Danushkodi detailed the findings of her physical examination, noting that appellant exhibited tenderness in the C5, C6, and C7 nerve distributions bilaterally and pain upon extension and rotation of the shoulders. She diagnosed intervertebral disc disorder with myelopathy of the cervical region at C5-6. Dr. Danushkodi rated the permanent impairment of appellant's upper extremities under the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* (including Proposed Table 1 -- Spinal Nerve Impairment: Upper Extremity Impairments). She indicated that the class of diagnosis (CDX) for appellant's mild sensory deficit associated with the C7 nerve distribution of the right upper extremity resulted in a Class 1 impairment with a default value of 1 percent. Dr. Danushkodi assigned a grade modifier for functional history (GMFH) of 4, and assigned a grade modifier for clinical studies (GMCS) of 3. She noted that a grade modifier for physical examination (GMPE) was not applicable as the physical examination determined the CDX. Application of the net adjustment formula yielded the value of +4, and resulted in 1 percent permanent impairment due to sensory deficit associated with the C7 nerve distribution of the right upper extremity. Dr. Danushkodi further noted that appellant's mild motor deficit associated with the C7 nerve distribution of the right upper extremity resulted in a Class 1 impairment with a default value of 5 percent. She determined that application of the net adjustment formula resulted in 9 percent permanent impairment due to mild motor deficit associated with the C7 nerve distribution of the right upper extremity. Dr. Danushkodi indicated that combining the 1 percent value related to sensory deficit with the 9 percent value related to motor deficit resulted in 10 percent permanent impairment of the right upper extremity for deficits associated with the C7 nerve distribution.

Dr. Danushkodi then indicated that she was evaluating permanent impairment of the right upper extremity related to the "C8T1" nerve. She advised that appellant's mild sensory deficit associated with the "C8T1" nerve distribution of the right upper extremity resulted in a Class 1 impairment with a default value of five percent. Dr. Danushkodi assigned a GMFH of 4, and a GMCS of 3. She found that a grade modifier for GMPE was not warranted as physical examination determined the CDX. Application of the net adjustment formula yielded the value of +4, and resulted in five percent permanent impairment due to sensory deficit associated with the "C8T1" nerve distribution of the right upper extremity. Dr. Danushkodi further found that appellant's mild motor deficit associated with the "C8T1" nerve distribution of the right upper extremity resulted in a Class 1 impairment with a default value of 13 percent. Application of the net adjustment formula yielded the value of +4, and resulted in 13 percent permanent impairment due to mild motor deficit associated with the "C8T1" nerve distribution of the right upper extremity. Dr. Danushkodi noted that combining the 5 percent value related to sensory deficit with the 13 percent value related to motor deficit resulted in 18 percent permanent impairment of the right upper extremity associated with the "C8T1" nerve. She then indicated that combining the 10 percent value for deficits associated with the C7 nerve distribution with the 18 percent value for deficits associated with the "C8T1" nerve distribution resulted in 28 percent permanent

impairment of appellant's right upper extremity. Dr. Danushkodi then performed similar calculations for the left upper extremity to determine that appellant had 10 percent permanent impairment for deficits associated with the left C7 nerve distribution and 18 percent permanent impairment for deficits associated with the left "C8T1" nerve distribution. She then indicated that combining the 10 percent value for deficits associated with the left C7 nerve distribution with the 18 percent value for deficits associated with the left "C8T1" nerve distribution resulted in 28 percent permanent impairment of appellant's left upper extremity. Thus, Dr. Danushkodi concluded that appellant had 28 percent permanent impairment of each upper extremity.

On October 3, 2024 OWCP requested that Dr. Tontz, in his role as DMA, review Dr. Danushkodi's August 29, 2024 report and provide his opinion on the permanent impairment of appellant's upper extremities under the standards of the A.M.A., *Guides* and *The Guides Newsletter*.

In an October 24, 2024 report, Dr. Tontz discussed Dr. Danushkodi's August 29, 2024 permanent impairment rating and indicated that he agreed with her assessment that appellant had 28 percent permanent impairment of each upper extremity.

By decision dated March 13, 2025, OWCP granted appellant a schedule award for 28 percent permanent impairment of the left upper extremity (arm) and an additional 26 percent permanent impairment of the right upper extremity (arm), thereby compensating him for a total of 28 percent permanent impairment of each upper extremity. The award ran for 174.72 weeks for the period December 31, 2024 through May 7, 2028.

On March 28, 2025 appellant requested reconsideration of the March 13, 2025 decision. In an accompanying statement, he argued that he was entitled to additional schedule award compensation. Appellant submitted the last page of Dr. Tontz' July 16, 2024 report, which was previously of record.

By decision dated April 24, 2025, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁷ and its implementing regulation⁸ 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.,

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

Guides as the uniform standard applicable to all claimants.⁹ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹⁰

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.¹¹ However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.¹² The sixth edition of the A.M.A., *Guides* (2009) provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*, which is a supplemental publication of the sixth edition of the A.M.A., *Guides*. 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.¹³

ANALYSIS -- ISSUE 1

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

In an August 29, 2024 report, Dr. Danushkodi, the OWCP referral physician, rated the permanent impairment of appellant's upper extremities under the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* (including Proposed Table 1 -- Spinal Nerve Impairment: Upper Extremity Impairments). She found that appellant had 1 percent permanent impairment due to sensory deficit associated with the C7 nerve distribution of the right upper extremity. Dr. Danushkodi further found that appellant had nine percent permanent impairment due to mild motor deficit associated with the C7 nerve distribution of the right upper extremity. She indicated that combining the 1 percent value related to sensory deficit with the 9 percent value related to motor deficit resulted in 10 percent permanent impairment of the right upper extremity for deficits associated with the C7 nerve distribution. Dr. Danushkodi then indicated that she was evaluating permanent impairment of the right upper extremity related to the "C8T1" nerve. She found that appellant had 5 percent permanent impairment due to sensory deficit associated with the "C8T1" nerve distribution of the right upper extremity. Dr. Danushkodi further found that appellant had 13 percent permanent impairment due to mild motor deficit associated with the "C8T1" nerve distribution of the right upper extremity. She noted that combining the 5 percent value related to sensory deficit with the 13 percent value related to motor deficit resulted in 18 percent permanent impairment of the right upper extremity for deficits associated with the

⁹ *Id.* See also T.T., Docket No. 18-1622 (issued May 14, 2019).

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 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. Tomokyo*, 51 ECAB 361, 367 (2000).

¹² *Supra* note 10, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5c(3) (March 2017).

¹³ *Supra* note 10, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

“C8T1” nerve. Dr. Danushkodi then indicated that combining the 10 percent value for deficits associated with the C7 nerve distribution with the 18 percent value for deficits associated with the “C8T1” nerve distribution resulted in 28 percent permanent impairment of appellant’s right upper extremity. She then performed similar calculations to determine that appellant had 28 percent permanent impairment of the left upper extremity, which was comprised of 10 percent permanent impairment related to deficits associated with the left C7 nerve distribution and 18 percent permanent impairment related to deficits associated with the left “C8T1” nerve distribution. Thus, Dr. Danushkodi concluded that appellant had 28 percent permanent impairment of each upper extremity.

The Board notes, however, that Proposed Table 1 -- Spinal Nerve Impairment: Upper Extremity Impairments of *The Guides Newsletter* has separate rating schemes for evaluating several nerve distributions associated with specific cervical discs, including C7, C8, and T1. In her August 29, 2024 report, Dr. Danushkodi rated permanent impairment associated with the C7 nerve distribution and the “C8T1” nerve distribution for each upper extremity. However, the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* do not provide a scheme for rating permanent impairment associated with a “C8T1” nerve distribution and, therefore, Dr. Danushkodi’s August 29, 2024 report is in need of clarification.

Once OWCP undertakes development of the medical evidence, it must resolve the relevant issues in the case.¹⁴ In a situation where OWCP secures an opinion from a second opinion physician and the opinion from such second opinion physician requires clarification or elaboration, it has the responsibility to secure a supplemental report from the physician for the purpose of correcting the defect in the original opinion.¹⁵

Given the above-noted deficiencies of Dr. Danushkodi’s report, the case is remanded to OWCP to request clarification from Dr. Danushkodi regarding her opinion on the permanent impairment of appellant’s upper extremities. If Dr. Danushkodi is unavailable or unwilling to provide such clarification, OWCP must refer the case to a new second opinion physician for a rationalized medical opinion on the issue in question.¹⁶ Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁷

CONCLUSION

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

¹⁴ See *K.A.*, Docket No. 23-0773 (issued November 1, 2024); *S.A.*, Docket No. 18-1024 (issued March 12, 2020); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁵ See *G.L.*, Docket No. 23-0584 (issued April 1, 2024); *M.F.*, Docket No. 23-0881 (issued December 6, 2023); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *Ayanle A. Hashi*, 56 ECAB 234 (2004) (when OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues).

¹⁶ *S.F.*, Docket No. 23-0509 (issued January 24, 2024); *D.W.*, Docket No. 20-0674 (issued September 29, 2020).

¹⁷ In light of the Board’s disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 13, 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. The April 24, 2025 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: July 7, 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