United States Department of Labor
Employees' Compensation Appeals Board

L.T., Appellant	)	
and	)	**Docket No. 25-0619**
	)	**Issued: July 15, 2025**
DEPARTMENT OF VETERANS AFFAIRS, AMERICAN LAKE MEDICAL CENTER, Tacoma, WA, 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 June 2, 2025, appellant filed a timely appeal from a May 2, 2025 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 34 percent permanent impairment of her right upper extremity and/or 12 percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

[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 decisions are incorporated herein by reference. The relevant facts are as follows.

On January 5, 2015, appellant, then a 67-year-old social worker, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral shoulder injuries due to factors of her federal employment.[3] On February 15, 2015, OWCP accepted the claim for bilateral shoulder adhesive capsulitis, bilateral shoulder impingement, and aggravation bilateral shoulder arthritis.[4]

On February 23, 2015, appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a December 30, 2014 report, Dr. Daniel A. Brzusek, a treating Board-certified physiatrist, diagnosed bilateral shoulder adhesive capsulitis, bilateral shoulder impingement, and aggravation of bilateral shoulder arthritis, caused or aggravated by appellant's accepted employment injuries. He recounted that he had previously determined in a July 12, 2012 report that appellant had 34 percent permanent impairment of the right upper extremity, and 12 percent permanent impairment of the left upper extremity. Dr. Brzusek then used appellant's current physical examination findings and the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[5] to rate appellant's current bilateral shoulder impairment using the range of motion (ROM) methodology. Pursuant to Table 15-34, page 475 and Figures 15-28, page 475; Table 15-29, page 475; and Table 15-30, page 476, he determined that appellant had a total right upper extremity permanent impairment of 35 percent and left upper extremity permanent impairment of 12 percent. Dr. Brzusek concluded that appellant's permanent impairment ratings were little changed from her previous evaluation on July 12, 2012.

On March 5, 2015, Dr. Kenneth D. Sawyer, a Board-certified orthopedic surgeon, serving as an OWCP district medical adviser (DMA), reviewed Dr. Brzusek's permanent impairment rating and determined that appellant's permanent impairment should be calculated using the ROM methodology as it provided a higher rating than a diagnosis-based impairment (DBI) rating methodology. He found, however, that Dr. Brzusek had incorrectly applied Table 15-34 of the

[2] Docket No. 18-1031 (issued March 5, 2019); Docket No. 16-0585 (issued March 27, 2017).

[3] Appellant retired from the employing establishment, effective June 28, 2014.

[4] OWCP assigned the present claim OWCP File No. xxxxxx012. Appellant has a prior claim under OWCP File No. xxxxxx178, wherein OWCP accepted appellant's occupational disease claim (CA-2) for bilateral impingement disorder of right shoulder region bursae and tendons. By decision dated November 16, 2012, OWCP granted appellant a schedule award for 34 percent right upper extremity permanent impairment and 12 percent left upper extremity permanent impairment, due to her accepted bilateral shoulder conditions. OWCP File No. xxxxxx178 has been administratively combined OWCP File Nos. xxxxxx178 and xxxxxx012, with the latter designated as the master file.

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

A.M.A., *Guides*. Dr. Sawyer concluded that appellant had 25 percent right upper extremity permanent impairment, and 13 percent left upper extremity permanent impairment.

On April 20, 2015, OWCP referred appellant for a second opinion evaluation with Dr. Josef K. Eichinger, a Board-certified orthopedic surgeon, to determine the extent of appellant's bilateral upper extremity permanent impairment.

In a June 15, 2015 report, Dr. Eichinger recounted his review of the medical record and the statement of accepted facts (SOAF). Using the A.M.A., *Guides*, and appellant's physical examination findings, he rated appellant's bilateral shoulder impairment using the ROM methodology. Dr. Eichinger concluded that appellant had 14 percent right upper extremity permanent impairment and 16 percent left upper extremity permanent impairment.

In a letter dated August 12, 2015, OWCP referred appellant to Dr. Lance Brigham, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion between Dr. Eichinger, OWCP's referral physician, Dr. Sawyer, the DMA, and Dr. Brzusek, appellant's treating physician, regarding the extent of appellant's bilateral upper extremity permanent impairment.

In a September 2, 2015 report, Dr. Brigham noted appellant's physical examination findings, including loss of ROM of both shoulders. Using the A.M.A., *Guides*, Table 15-34, page 475, Dr. Brigham calculated 11 percent permanent impairment of each upper extremity based on ROM methodology.

On November 15, 2015, Dr. L. Jean Weaver, an internist serving as OWCP's DMA, reviewed and concurred with Dr. Brigham's permanent impairment evaluation of appellant's upper extremities.

By decision dated December 15, 2015, OWCP denied appellant's claim for an increased schedule award. It found that she had previously received a schedule award under OWCP File No. xxxxxx178 for 34 percent permanent impairment of the right upper extremity, and 12 percent permanent impairment of the left upper extremity, and was not entitled to an additional schedule award for her upper extremities under the current claim.

On February 8, 2016, appellant appealed to the Board. By decision dated March 27, 2017,[6] the Board set aside OWCP's December 15, 2015 decision and remanded the case to OWCP for further development of all of the medical evidence, to be followed by a *de novo* decision.

Following the Board's March 27, 2017 decision, OWCP requested review by a DMA to consider a permanent impairment rating in accordance with the A.M.A., *Guides*, utilizing both the ROM and DBI methodologies.

In an August 1, 2017 report, Dr. David H. Garelick, a Board-certified orthopedic surgeon serving as a DMA, reviewed the medical record, including the reports from Drs. Brzusek, Eichinger, and Brigham. Based on Dr. Brigham's September 2, 2015 report, he agreed that ROM

[6] Docket No. 16-0585 (issued March 27, 2017).

was the appropriate method for rating appellant's upper extremity permanent impairment. Dr. Garelick explained that using the DBI methodology, the most that could be awarded for post-traumatic degenerative arthritis would be nine percent. Using Table 15-34, page 475 of the A.M.A., *Guides*, and the ROM methodology, he found that appellant had 11 percent permanent impairment of each upper extremity. Dr. Garelick found September 2, 2015, the date of Dr. Brigham's report, to be the date of maximum medical improvement (MMI).

On October 25, 2017, OWCP requested clarification from Dr. Garelick regarding whether the prior impairment rating should be modified after considering permanent impairment including both the ROM and DBI methodologies.

Dr. Garelick, in a supplemental report dated October 25, 2017, noted that appellant had previously been granted a schedule award for 34 percent permanent impairment of her right upper extremity and 12 percent permanent impairment of her left upper extremity under OWCP File No. xxxxxx178, and thus, no additional schedule award was warranted. However, he advised that the date of MMI should be modified to September 2, 2015.

In an August 19, 2012 report, Dr. William Stewart, an OWCP DMA, found 34 percent right upper extremity permanent impairment.

In a March 13, 2018 supplemental report, Dr. Garelick reviewed the medical record. He explained that if the loss of ROM had an organic basis, ROM should be measured three times and the greatest measurement should be used to determine permanent impairment. Dr. Garelick further related that the evaluator should determine whether the ROM or DBI methodology yielded the greater impairment. He noted that the most that could be awarded under the DBI methodology, based on appellant's diagnosis post-traumatic degenerative arthritis (which he found the most appropriate diagnosis), was nine percent. Thus, Dr. Garelick determined that the ROM methodology was the proper method to evaluate appellant's upper extremity permanent impairments. As appellant's ROM of the shoulders had been properly measured three times, he used Table 15-34, page 475 to find a total of 11 percent left upper extremity permanent impairment and 11 percent right upper extremity permanent impairment. Dr. Garelick concluded that there was no basis for an increased award given the prior awards that appellant had received. He advised that the date of MMI should be modified to September 2, 2015.

By decision dated March 14, 2018, OWCP denied appellant's claim for an increased schedule award finding that appellant had not established more than the 34 percent permanent impairment of her right upper extremity and 12 percent permanent impairment of her left upper extremity previously awarded.

On April 23, 2018, appellant filed a timely appeal from the March 14, 2018 merit decision. By decision dated March 5, 2019, the Board affirmed the March 14, 2018 decision.[7] The Board found that appellant had not met her burden of proof to establish greater than 34 percent permanent impairment of her right upper extremity and 12 percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

[7] *Supra* note 2.

On September 27, 2023, appellant filed another Form CA-7 claim for an increased schedule award.

On December 16, 2024, OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Aleksandar Curcin, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of appellant's bilateral upper extremity permanent impairment.

In a report dated January 28, 2025, Dr. Curcin recounted his review of the medical evidence of record, the SOAF, and appellant's physical examination findings. He noted that pursuant to Table 15-5 of the A.M.A., *Guides,* the most that could be awarded under the DBI methodology, based on post-traumatic degenerative arthritis (which he found the most appropriate diagnosis) was nine percent. Thus, Dr. Curcin determined that ROM was the proper methodology to evaluate appellant's bilateral upper extremity permanent impairment. He measured ROM using Table 15-34, page 475, of both shoulders. Dr. Curcin found 3 percent permanent impairment for 100 degrees flexion, 1 percent permanent impairment for 30 degrees extension, 3 percent permanent impairment for 100 degrees abduction, 1 percent permanent impairment for 10 degrees adduction, 0 percent permanent impairment for 60 degrees external rotation, and 2 percent permanent impairment for 60 degrees internal rotation, resulting in a 10 percent permanent impairment of each upper extremity. He indicated that under Table 15-36, a net modifier of 1 should be applied, therefore each 10 percent impairment for loss of ROM was multiplied by 5 percent, resulting in a .5 percent increase, which was rounded up to a 1 percent increase, resulting in a total of 11 percent permanent impairment of each upper extremity.

OWCP referred appellant's case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a DMA. It requested that he review the case record and evaluate the permanent impairment of appellant's upper extremities under the standards of the sixth edition of the A.M.A., *Guides*.

In a report dated April 5, 2025, Dr. Katz indicated that he had reviewed the SOAF and the medical record, including Dr. Curcin's January 28, 2025 report. He opined that appellant had reached MMI on January 28, 2025, the date of Dr. Curcin's physical examination. Dr. Katz agreed with Dr. Curcin that appellant had 11 percent permanent impairment of each upper extremity in accordance with the sixth edition of the A.M.A., *Guides* using the ROM methodology. He then found that appellant had seven percent permanent impairment of each upper extremity using the DBI methodology. Dr. Katz noted that appellant's present permanent impairments did not exceed the prior 12 percent permanent impairment of the left upper extremity and 34 percent of the right upper extremity and, therefore, no additional award was due for either upper extremity.

By decision dated May 2, 2025, OWCP denied appellant's claim.

LEGAL PRECEDENT

The schedule award provisions of FECA[8] and its implementing regulations[9] 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.[10] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.[11]

The sixth edition of the A.M.A., *Guides* provides a DBI methodology of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.[12] In addressing upper extremity impairments, the sixth edition requires identification 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).[13] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[14]

Regarding the application of the ROM or the DBI methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

> "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).
>
> "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*

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] *Id.* at § 10.404(a).

[11] 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).

[12] A.M.A., *Guides* 3, section 1.3.

[13] *Id.* at 383-492.

[14] *Id.* at 411.

impairment rating for the diagnosis in question, the method producing the higher rating should be used." (Emphasis in the original.)[15]

The Bulletin further advises:

"If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE.

"If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* do not allow for the use of ROM for the diagnosis in question, the DMA should independently calculate impairment using the DBI method and clearly explain in the report, citing applicable tables in Chapter 15 of the [A.M.A.,] *Guides*, that ROM is not permitted as an alternative rating method for the diagnosis in question.

"If the rating physician provided an assessment using the DBI method and the [A.M.A.,] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methodologies and identify the higher rating for the CE."[16]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.[17]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 34 percent permanent impairment of her right upper extremity and/or 12 percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of the March 14, 2018 OWCP merit decision because the Board considered that evidence in its March 5, 2019 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.[18]

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

[16] *Id.*

[17] *See supra* note 12, Chapter 2.808.6f (March 2017).

[18] *T.R.*, Docket No. 22-0673 (issued November 19, 2024); *A.G.*, Docket No. 18-0329 (issued July 26, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

OWCP thereafter referred appellant to Dr. Curcin for a second opinion impairment evaluation. In his January 28, 2025 report, Dr. Curcin determined that the ROM method yielded a higher impairment rating than the DBI method. He measured ROM for both upper extremities and determined that, for each shoulder, appellant had 3 percent permanent impairment for 100 degrees flexion, 1 percent permanent impairment for 30 degrees extension, 3 percent permanent impairment for 100 degrees abduction, 1 percent permanent impairment for 10 degrees adduction, 0 percent permanent impairment for 60 degrees external rotation, and 2 percent permanent impairment for 60 degrees internal rotation, resulting in 10 percent permanent impairment of each upper extremity. Dr. Curcin also indicated that under Table 15-36, the ROM impairment rating of 10 should be multiplied by 5 percent, which rounded up to a total of 11 percent permanent impairment of each upper extremity.

OWCP properly routed the case record to its DMA, Dr. Katz. In his April 5, 2025 report, Dr. Katz concurred with Dr. Curcin's 11 percent permanent impairment rating of each upper extremity under the ROM methodology. He provided proper impairment calculations that mirrored those of Dr. Curcin. The DMA explained that the ROM method of rating produced a higher impairment rating for the upper extremities than would be calculated under the DBI methodology. Dr. Katz also concluded that, as appellant had previously received a schedule award for 34 percent permanent impairment of the right upper extremity, and 12 percent permanent impairment of the left upper extremity, she was not entitled to an increased schedule award.

As the medical evidence of record is insufficient to establish greater permanent impairment than that which was previously awarded, 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 34 percent permanent impairment of her right upper extremity and/or 12 percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 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