United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 25-0440**
	)	**Issued: May 12, 2025**
U.S. POSTAL SERVICE, POST OFFICE, San Antonio, TX, 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 March 30, 2025 appellant filed a timely appeal from a February 28, 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 his burden of proof to establish greater than 12 percent permanent impairment of his right upper extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

On January 21, 2022 appellant, then a 54-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that he injured his right hand, head, neck, back, and lower

[1] 5 U.S.C. § 8101 *et seq*.

extremities when he drove his truck into a ditch while in the performance of duty.[2] OWCP accepted the claim for displaced fracture of base of right second metacarpal bone and abrasion of the right hand.

On January 31, 2022 appellant underwent surgery to his right hand by Dr. Roberto A. Martinez, a Board-certified plastic surgeon, including open reduction internal fixation (ORIF) of the right index finger metacarpal base.

On July 26, 2022 Dr. Martinez removed the hardware at the right index metacarpal base.

In a medical report dated August 1, 2023, Robert Raposo, a physician assistant, noted physical examination findings of normal and painful active range of motion (ROM) of the right wrist and numbness in the right hand at the surgical sites. He released appellant to return to work without restrictions.

On October 6, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support thereof, appellant submitted a March 7, 2023 permanent impairment evaluation report by Dr. Salvador P. Baylan, a Board-certified physiatrist, who found that appellant had reached maximum medical improvement (MMI) and had residual symptoms of pain, weakness, numbness, tingling, and difficulty with fine and gross motor coordination in the right hand. On physical examination, Dr. Baylan documented tenderness to the right wrist and index finger, reduced grip strength and lateral pinch of the right hand compared to the left, and positive Tinel's sign at the right carpal tunnel. He provided his ROM examination of appellant's right index finger and wrist, repeated on the active measurements of three separate ROM efforts, and recorded a *Quick*DASH score of 86. Dr. Baylan also reviewed a February 24, 2023 magnetic resonance imaging (MRI) scan of the right hand and noted patchy bone marrow edema and osteoarthritis in the second metacarpal, mild first and third carpometacarpal osteoarthritis, and moderate extensor carpi ulnaris tenosynovitis. He applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[3] to his examination findings. Using the diagnosis-based impairment (DBI) rating method, Dr. Baylan found one percent right upper extremity impairment for the second metacarpal comminuted fracture and, using the ROM rating method, he found six percent right upper extremity impairment for the right wrist. Referencing the Combined Values Chart, he calculated that these upper extremity impairments for the index finger and wrist equated to seven percent right upper extremity permanent impairment.

[2] OWCP assigned the present claim OWCP File No. xxxxxx370. Appellant has a previous August 9, 2017 traumatic injury claim, which OWCP accepted for right shoulder and upper arm strain, right shoulder impingement, right superior glenoid labrum lesion, and contusion, strain, and unilateral primary osteoarthritis of the right hip under OWCP File No. xxxxxx073. On June 16, 2020 OWCP granted appellant a schedule award of 10 percent of the right upper extremity and 1 percent of the right lower extremity. The award ran for 34.08 weeks from September 27, 2018 through May 23, 2019. OWCP has administratively combined OWCP File Nos. xxxxxx037 and xxxxxx370, with the latter serving as the master file.

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

On October 24, 2023 OWCP referred the case record, along with a statement of accepted facts (SOAF), to Dr. Charles W. Kennedy, an orthopedist, for a second opinion examination and evaluation of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.[4]

In a report dated December 4, 2023, Dr. Kennedy reviewed the SOAF and medical record and noted that appellant related ongoing complaints of "6/10" right hand pain. He performed a physical examination of the right wrist, utilized the ROM methodology, and noted ROM measurements of 40 degrees extension, 70 degrees flexion, 30 degrees ulnar deviation, and 20 degrees radial deviation. Dr. Kennedy also provided his ROM examinations of appellant's right index finger, repeated on three measurements, which he indicated were normal for flexion and extension of the metacarpophalangeal (MCP), proximal interphalangeal (PIP), and distal interphalangeal (DIP).[5] He diagnosed closed displaced fracture of base of second metacarpal bone and a right-hand abrasion. Dr. Kennedy opined that appellant had reached MMI on December 4, 2023. Using the DBI methodology, he found one percent right upper extremity impairment for appellant's right index finger. Regarding the wrist, Dr. Kennedy used the ROM methodology and found three percent permanent impairment of the right upper extremity.

On November 7, 2024 OWCP referred Dr. Kennedy's December 4, 2023 report and an updated SOAF to Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review and an opinion regarding appellant's permanent impairment.

In a November 26, 2024 report, Dr. Slutsky applied the DBI methodology to Dr. Kennedy's examination findings and found that under Table 15-2, Digit Regional Grid, page 393, the class of diagnosis (CDX) for a metacarpal fracture with ORIF was a Class 1 impairment with a default impairment rating of six percent. He assigned a grade modifier for functional history (GMFH) of 0 due to "no documented pain and no *Quick*DASH score"; a grade modifier for physical examination (GMPE) of 1 for no documented palpatory findings and less than 20 percent total digit impairment; and found that a grade modifier for clinical studies (GMCS) was not applicable. Dr. Slutsky applied the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), which resulted in -1, for a final rating of five percent digit impairment. He also evaluated appellant's right index finger impairment under the ROM methodology and found 10 percent digit impairment. Dr. Slutsky indicated that he disagreed with Dr. Kennedy's finding of three percent upper extremity impairment under the ROM methodology, as three sets of validated upper extremity ROM measurements were not performed. He also disagreed that appellant had normal finger motion, noting that DIP flexion of 60 degrees was compatible with 10 percent digit impairment, which converted to 2 percent upper extremity impairment. Dr. Slutsky opined that appellant reached MMI on February 29, 2024, the date of Dr. Kennedy's examination.

On December 20, 2024 OWCP requested clarification from Dr. Slutsky.

[4] *Id*.

[5] Dr. Kennedy noted the following ROM measurements in the right index finger: 20, 20, and 10 degrees MCP extension; 100, 100, and 90 degrees MCP flexion; 0-, 0-, and -10-degrees PIP extension; 100, 100, and 90 PIP flexion; 0, 0, and -10 degrees DIP extension; and 60, 50, and 60 degrees DIP flexion.

In a report dated January 28, 2025, Dr. Slutsky indicated that appellant had 5 percent digit impairment of the right index finger using the DBI rating method and 10 percent digit impairment using the ROM rating method, which was the higher result of the two methodologies. He indicated that 10 percent digit impairment converted to 2 percent right upper extremity impairment. Dr. Slutsky referenced the prior schedule award for 10 percent permanent impairment of appellant's right upper extremity under OWCP File No. xxxxxx073 and clarified that the current 2 percent permanent impairment of the right upper extremity was in addition to the prior percentage awarded.

By decision dated February 28, 2025, OWCP granted appellant a schedule award for an additional 2 percent permanent impairment of the right upper extremity, for a total 12 percent permanent impairment of the right upper extremity. The award ran for 6.24 weeks from February 29 through April 12, 2024.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] and its implementing regulations[7] 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 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.[8] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, is used to calculate schedule awards.[9]

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.[10] FECA Bulletin No. 17-06 provides:

> "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*

[6] *Supra* note 1.

[7] 20 C.F.R. § 10.404.

[8] *Id.*; *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

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

impairment rating for the diagnosis in question, the method producing the higher rating should be used."[11] (Emphasis in the original.)

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the fingers and hand, the relevant portions of the arm for the present case, reference is made to Table 15-2 (Digital Regional Grid) beginning on page 391. After the CDX is determined from the appropriate regional grid (including identification of a default grade value), the net adjustment formula is applied using a GMFH, GMPE, and/or GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[13]

The A.M.A., *Guides* also provide that the ROM impairment method is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other diagnosis-based sections are applicable.[14] If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.[15] Adjustments for functional history may be made if the evaluator determines that the resulting impairment does not adequately reflect functional loss, and functional reports are determined to be reliable.[16]

Regarding the application of ROM or 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)."[17]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's DMA for an opinion concerning the nature and percentage of

[11] *Id*.

[12] *See* A.M.A., *Guides* (6th ed. 2009) at 405-12. Table 15-2 also provides that, if motion loss is present for a claimant with certain diagnosed digit conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such a ROM rating stands alone and is not combined with a DBI rating. *Id*. at 394, 468-469.

[13] *Id*. at 23-28.

[14] *Id*. at 461.

[15] *Id*. at 473.

[16] *Id*. at 474.

[17] *Id*. at 544.

impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[18]

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.[19]

ANALYSIS

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

In a March 7, 2023 report, Dr. Baylan, appellant's attending physician, utilized the DBI and ROM methodologies for rating permanent impairment of appellant's right wrist and index finger, noted appellant's complaints and *Quick*DASH score, and provided his ROM examination measurements for each, repeated three times. OWCP referred appellant and Dr. Baylan's March 7, 2023 report to Dr. Kennedy for a second opinion evaluation to determine his permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*. In his December 4, 2023 report, Dr. Kennedy found one percent permanent impairment for the index finger under the DBI methodology and three percent permanent impairment of the right upper extremity for the wrist using the ROM methodology. OWCP forwarded the December 4, 2023 report of Dr. Kennedy to the DMA, Dr. Slutsky.[20] In his November 26, 2024 and January 26, 2025 reports, Dr. Slutsky noted that Dr. Kennedy's report only contained one set of ROM measurements of appellant's right wrist rather than three measurements and, as such, the ROM measurements were invalid for impairment calculations of the wrist. He then applied the A.M.A., *Guides* to Dr. Kennedy's examination findings and calculated appellant's permanent impairment of the right index finger under the DBI rating method. After applying a GMFH of 0 due to no documented pain and no *Quick*DASH score, Dr. Slutsky found five percent digit impairment. He also applied the ROM methodology to appellant's right index finger and found 10 percent digit impairment, which translated to 2 percent right upper extremity impairment.

The Board finds that OWCP did not follow the procedures as outlined in FECA Bulletin No. 17-06 after the DMA advised that the measurements had not been obtained for the right wrist to determine appellant's ROM measurements.[21] Dr. Kennedy's December 4, 2023 report, upon which OWCP's DMA relied, did not contain three sets of ROM measurements necessary to

[18] *See supra* note 9 at Chapter 2.808.6(f) (March 2017); *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).

[19] 20 C.F.R. § 10.404(d). *See B.C.*, Docket No. 21-0702 (issued March 25, 2022); *D.P.*, Docket No. 19-1514 (issued October 21, 2020); *S.M.*, Docket No. 17-1826 (issued February 26, 2018).

[20] *Id*.

[21] *Id*.

properly evaluate appellant's permanent impairment of the wrist under the ROM method.[22] As noted above, FECA Bulletin No. 17-06 provides detailed instructions for obtaining sufficient evidence to conduct a complete permanent impairment evaluation. However, such instructions were not fully carried out in this case, and therefore further development of the medical evidence is required in accordance with FECA Bulletin No. 17-06.[23]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.[24] Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[25]

On remand, OWCP shall refer appellant, along with the SOAF and the case record, to a new second opinion physician in the appropriate field of medicine, consistent with OWCP's procedures. The second opinion physician shall provide appellant's current symptoms, *Quick*DASH score, and three sets of ROM measurements of the wrists and digits. The permanent impairment rating provided by the second opinion physician, based on both the DBI and ROM methodologies, shall then be referred to a DMA for review. Following 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.

[22] Section 15.7 of the sixth edition of the A.M.A., *Guides* provides that ROM should be measured after a warmup, in which the individual moves the joint through its maximum ROM at least three times. The ROM examination is then performed by recording the active measurements from three separate ROM efforts and all measurements should fall within 10 degrees of the mean of these three measurements. The maximum observed measurement is used to determine the ROM impairment. A.M.A., *Guides* 464.

[23] *See C.L.*, Docket No. 25-0217 (issued February 13, 2025); *S.F. (J.F.)*, Docket No. 22-0892 (issued April 3, 2023); *C.R.*, Docket No. 21-1265 (issued March 23, 2022); *J.L.*, Docket No. 19-1684 (issued November 20, 2020); *R.L.*, Docket No. 19-1793 (issued August 7, 2020); *E.P.*, Docket No. 19-1708 (issued April 15, 2020).

[24] *See D.C.*, Docket Nos. 22-0020 and 22-0279 (issued April 25, 2023); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

[25] *Id.*; *see also S.A.*, Docket No. 18-1024 (issued March 12, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 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: May 12, 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