

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

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B.W., Appellant )  
and )  
U.S. POSTAL SERVICE, POST OFFICE, ) Docket No. 25-0622  
Lithia Springs, GA, Employer ) Issued: November 18, 2025  
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)

*Appearances:*

*Alan J. Shapiro, 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 June 16, 2025 appellant, through counsel, filed a timely appeal from a May 23, 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 any permanent impairment of the left upper extremity or greater than nine percent permanent impairment of the right upper extremity for which she previously received a schedule award.

## **FACTUAL HISTORY**

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

On April 21, 2011 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 19, 2011 she injured the right side of her neck during a motor vehicle accident while in the performance of duty. She stopped work on April 19, 2011 and returned to work on June 27, 2011 for four hours per day with restrictions. Appellant stopped work again on July 5, 2011 and did not return. OWCP accepted the claim for neck sprain. It subsequently expanded the acceptance of the claim to include right brachial neuritis or radiculitis, right bicipital tenosynovitis, right shoulder impingement syndrome, and right shoulder osteoarthritis. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective June 6, 2011, and on the periodic rolls, effective September 25, 2011.

On December 30, 2019 and January 21, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated January 22, 2020, OWCP requested that appellant submit a report from her treating physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>4</sup> and provide the date appellant reached maximum medical improvement (MMI). It afforded her 30 days to submit the necessary evidence.

Appellant submitted a July 26, 2019 impairment evaluation report by Dr. Ralph D'Auria, a Board-certified physiatrist, who reviewed her medical records and related her current complaints of right shoulder and cervical neck pain. Dr. D'Auria opined that appellant had reached MMI on May 17, 2019. Referencing *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), he calculated 42 percent permanent impairment of the right upper extremity and 39 percent permanent impairment of the left upper extremity due to moderate sensory deficits resulting from the cervical spine injury. Dr. D'Auria also assigned 14 percent permanent impairment of the right shoulder based on the range of motion (ROM) methodology.

On April 15, 2020 OWCP requested Dr. Herbert White, Jr., Board-certified in occupational medicine serving as an OWCP district medical adviser (DMA), review a Statement of Accepted

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<sup>3</sup> Docket No. 19-1023 (issued June 16, 2020).

<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

Facts (SOAF) and the record, including Dr. D'Auria's July 26, 2019 impairment evaluation report, for a determination on whether appellant sustained a permanent impairment of the right and/or left upper extremity and date of MMI.

In an April 26, 2020 report, Dr. White reported that while he reviewed appellant's medical reports, he was unable to rate the upper extremity impairment with the information provided in the record. He explained that the cervical spine impairment could not be rated because Dr. D'Auria had not provided the necessary findings. Dr. White further noted inconsistencies in the medical records concerning appellant's sensory and motor evaluations. Additionally, he asserted that he was unable to rate the right shoulder impairment using the ROM methodology due to inconsistent contralateral shoulder measurements and also emphasized the lack of a diagnosis-based impairment (DBI) rating. Dr. White determined that appellant reached MMI on July 26, 2019 and recommended a second opinion evaluation for the purposes of an impairment rating.

In a March 6, 2024 development letter, OWCP requested that appellant submit a report from her treating physician in accordance with the sixth edition of the A.M.A., *Guides*, and provide the date she reached MMI. It afforded her 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated April 8, 2024, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On April 16, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated May 21, 2024, OWCP's hearing representative vacated the April 8, 2024 OWCP decision and remanded the case for OWCP to further develop the medical evidence.

On August 9, 2024 OWCP referred appellant, along with the case record, SOAF, and a series of questions to Dr. Curt Freudenberger, a Board-certified orthopedic surgeon, for a second opinion to determine the extent of appellant's permanent impairment for schedule award purposes.

In a September 4, 2024 report, Dr. Freudenberger indicated that he reviewed the medical evidence of record and provided findings on physical examination, including ROM measurements for the right shoulder. On physical examination, he found that appellant was neurologically intact in both motor and sensation, displayed no evidence of decrement, strength on a limited plane at approximately 5/5 bilaterally, deep tendon reflexes were preserved, and there was no evidence of radiculopathy or peripheral neuropathy. Referencing *The Guides Newsletter*, Dr. Freudenberger determined that appellant had zero percent permanent impairment of the left or right upper extremity as a result of cervical spinal nerve impairments as she had no radiculopathy or peripheral neuropathy, normal sensory and motor findings, intact ROM, and mild degenerative changes. He referred to the sixth edition of the A.M.A., *Guides*, to calculate his impairment rating for the right upper extremity utilizing the DBI methodology. Dr. Freudenberger referenced Table 15-5 (Shoulder Regional Grid),<sup>5</sup> to determine that the class of diagnosis (CDX) for shoulder pain, was

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<sup>5</sup> *Id.* at 401, Table 15-5.

a Class 1 impairment with a grade C default value. He assigned a grade modifier for functional history (GMFH) of 1 based on painful range of motion. Dr. Freudenberger assigned a grade modifier for physical examination (GMPE) of 1 due to decreased active and passive range of motion. He assigned a grade modifier for clinical studies (GMCS) of 1 based on mild AC joint osteoarthritis. Dr. Freudenberger utilized the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (1 - 1) = 0$ , which resulted in a default grade C or one percent permanent impairment of the right upper extremity.

Dr. Freudenberger also utilized the ROM methodology and recorded three sets of ROM measurements for each shoulder. On physical examination of appellant's right shoulder, he observed 90 degrees of forward flexion compared to 170 on the left, 20 degrees of extension compared to 40 on the left, 70 degrees of abduction compared to 160 on the left, 20 degrees of adduction compared to 40 on the left, 90 degrees of external rotation compared to 90 on the left, and 40 degrees of internal rotation compared to 90 on the left. Dr. Freudenberger added each percentage of loss of ROM and found that appellant had 11 percent permanent impairment of the right upper extremity due to loss of ROM. He explained that when the DBI and ROM ratings were different, the greater rating must be used and concluded that appellant had 11 percent permanent impairment of the right upper extremity. Dr. Freudenberger also reviewed Dr. D'Auria's July 26, 2019 report and disagreed with his impairment rating for brachial plexus injury, noting that there was no evidence based on objective examination findings, clinical evidence, and diagnostic studies supporting the classification. He concluded that appellant reached MMI and had 11 percent permanent impairment to the right upper extremity.

On October 4, 2024 OWCP again referred the case to Dr. White in his capacity as a DMA, for a determination on whether appellant sustained a permanent impairment of the right and/or left upper extremity and date of MMI.

In an October 13, 2024 report, Dr. White advised that he had reviewed Dr. Freudenberger's September 4, 2024 report. He concluded, as did Dr. Freudenberger, that appellant had zero permanent impairment of the cervical spine for the upper extremities when utilizing *The Guides Newsletter* as Dr. Freudenberger's examination revealed normal sensory and motor findings. Dr. White also noted that an April 12, 2018 examination also revealed normal sensory and motor findings which did not correlate with Dr. D'Auria's cervical spine impairment rating for decreased sensory and motor findings. He agreed with Dr. Freudenberger's assessment that application of the sixth edition of the A.M.A., *Guides* demonstrated that appellant had one percent permanent impairment of the right upper extremity under the DBI rating methodology. However, Dr. White disagreed with his calculation for 11 percent permanent impairment of the right upper extremity under the ROM rating methodology, instead calculating nine percent permanent impairment of the right upper extremity. He noted that there was no documentation of any injury to appellant's left shoulder and advised that, according to the A.M.A., *Guides*, page 461, section 15.7a, Clinical Measurements of Motion, "If the opposite extremity is neither involved nor previously injured, it must be used to define normal for that individual; any losses should be made in comparison to the opposite normal extremity." Dr. White noted that when rating the impairment with comparison to the unaffected left shoulder, the ROM methodology amounted to nine percent permanent impairment of the right upper extremity. He referenced Table 2-1 of the A.M.A., *Guides* and concluded that appellant had nine percent permanent impairment of the right upper extremity, given that she had a higher rating for permanent impairment under the ROM rating methodology.

than the one percent rating calculated under the DBI rating methodology. Dr. White concluded that she reached MMI on September 4, 2024.

By decision dated November 14, 2024, OWCP granted appellant a schedule award for nine percent permanent impairment of the right upper extremity. The award ran for 28.08 weeks from September 4, 2024 through March 19, 2025 and was based on the September 4, 2024 report of Dr. Freudenberger and the October 13, 2024 DMA report.

On November 22, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 21, 2025. No additional medical evidence was received.

By decision dated May 23, 2025, OWCP's hearing representative affirmed the November 14, 2024 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>6</sup> and its implementing federal regulations,<sup>7</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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The methodology used in making such a determination is a matter, which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.<sup>8</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>9</sup>

The sixth edition requires identifying the impairment class for CDX, which is then adjusted by grade modifiers based on GMFH, GMPE, and/or GMCS.<sup>10</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>11</sup>

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<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6<sup>th</sup> ed. 2009); 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, Exhibit 1 (January 2010).

<sup>9</sup> P.R., Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>10</sup> A.M.A., *Guides* 494-531.

<sup>11</sup> *Id.* at 521.

The A.M.A., *Guides* also provides that the ROM impairment methodology 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

Regarding the application of ROM or DBI impairment 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 impairment rating for the diagnosis in question, the method producing the higher rating should be used.*”<sup>15</sup> (Emphasis in the original.)

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.”<sup>16</sup>

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.<sup>17</sup> However, a schedule award is permissible where the employment-related spinal condition affects the upper

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<sup>12</sup> *Id.* at 461.

<sup>13</sup> *Id.* at 473.

<sup>14</sup> *Id.* at 474.

<sup>15</sup> FECA Bulletin No. 17-06 (issued May 8, 2017).

<sup>16</sup> *Id.*

<sup>17</sup> 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).

and/or lower extremities.<sup>18</sup> The sixth edition of the A.M.A., *Guides* 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>19</sup>

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 permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>20</sup>

### ANALYSIS

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

In his October 13, 2024 report, Dr. White utilized the DBI rating methodology to find that, under Table 15-5 (Shoulder Regional Grid), the CDX for right shoulder pain, resulted in a Class 1 impairment with a GMFH of 1, GMPE of 1, and GMCS of 1 and after applying the net adjustment formula, amounted to a default grade C or one percent permanent impairment of the right upper extremity.<sup>21</sup> He found that there was no ratable impairment of any spinal nerve for either motor or sensory defect and thus no ratable impairment under FECA for the accepted conditions. Dr. White referenced Proposed Table 1 of *The Guides Newsletter*, and reported that appellant was a Class 0 for no motor or sensory deficits of the spinal nerves in the left or right upper extremity. Regarding upper extremity impairment for the cervical spine, he properly determined that appellant had zero permanent impairment due to normal sensory and motor findings relating to the spine.<sup>22</sup>

Dr. White further found that utilizing the ROM methodology, appellant had nine percent permanent impairment of the right upper extremity when compared to the unaffected left shoulder. As the ROM rating methodology produced the higher impairment rating, he properly found that appellant sustained nine percent permanent impairment of the right upper extremity.

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<sup>18</sup> *Supra* note 9 at Chapter 2.808.5c(3) (February 2022).

<sup>19</sup> *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).

<sup>20</sup> *See D.J.*, Docket No. 19-0352 (issued July 24, 2020).

<sup>21</sup> *M.W.*, Docket No. 23-0832 (issued December 27, 2023).

<sup>22</sup> *R.S.*, Docket No. 24-0030 (issued March 19, 2024).

As Dr. White properly applied the A.M.A., *Guides*, and his opinion is detailed, well rationalized, and based on a proper factual background, his opinion represents the weight of the medical evidence.<sup>23</sup>

Appellant has not submitted additional medical evidence establishing any permanent impairment of the left upper extremity or greater than nine percent permanent impairment of the right upper extremity. Accordingly, the Board finds that she 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 any permanent impairment of the left upper extremity or greater than nine percent permanent impairment of the right upper extremity, for which she previously received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 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

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<sup>23</sup> R.G., Docket No. 21-0491 (issued March 23, 2023).