United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 25-0843**
	)	**Issued: November 24, 2025**
DEPARTMENT OF THE NAVY, FACILITIES MAINTENANCE DIVISION, MARINE CORPS BASE, Camp Pendleton, CA, Employer	)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 2, 2025 appellant, through counsel, filed a timely appeal from a March 17, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than five percent permanent impairment of each upper extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

On November 29, 2017 appellant, then a 57-year-old supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained swelling, numbness, and tingling in his hands and wrists due to factors of his federal employment. He indicated that, when he formerly worked as a heavy equipment operator, he used both of his hands to operate equipment levers, which caused vibration throughout his hands, wrists, and arms. Appellant advised that, as a supervisor, he used a keyboard and mouse, which caused swelling, numbness, and tingling in his hands and wrists. He noted that he first became aware of his claimed condition and realized its relation to factors of his federal employment on April 9, 2010. Appellant did not stop work.

Appellant retired effective December 27, 2017.

On January 10, 2018 OWCP accepted appellant's claim for bilateral carpal tunnel syndrome (CTS).

On July 9, 2018 appellant underwent OWCP-authorized right carpal tunnel release and right median nerve block.

On September 25, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On February 27, 2019 OWCP expanded the acceptance of appellant's claim to include trigger finger of the left ring finger.

On May 14, 2019 appellant underwent OWCP-authorized left carpal tunnel release and trigger finger release of the left ring finger.

By decision dated June 15, 2021, OWCP granted appellant a schedule award for two percent permanent impairment of each upper extremity due to his accepted bilateral CTS. The award ran for 12.48 weeks from November 9, 2020 through February 4, 2021 and was based on a November 12, 2020 report of Dr. Scott K. Tanaka, an attending Board-certified orthopedic surgeon, and an April 8, 2021 report of Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA).

On January 19, 2023 appellant underwent OWCP-authorized trigger finger release of the right ring finger.

In a February 8, 2024 report, Dr. James Brien, a Board-certified anesthesiologist, reported physical examination findings, noting that appellant no longer had any finger triggering. He determined that appellant had reached maximum medical improvement (MMI) for the accepted conditions of bilateral CTS and trigger finger of the left ring finger. Dr. Brien indicated

that appellant had been treated for chronic inflammatory demyelinating polyneuropathy and noted that, therefore, he was applying the standards of Table 13-11 (Criteria for Rating Impairments of the Upper Extremities due to CNS [central nervous system] Dysfunction) on page 335 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] He concluded that, under Table 13-11, appellant had 17 percent permanent impairment of the right upper extremity and 9 percent permanent impairment of the left upper extremity.

On March 9, 2024 appellant filed a Form CA-7 for an increased schedule award.

On March 26, 2024 OWCP referred appellant's case to Dr. Katz, in his role as a DMA, and requested that he review the medical record, including Dr. Brien's February 8, 2024 report, and provide an opinion on the permanent impairment of appellant's upper extremities. In an April 3, 2024 report, Dr. Katz noted deficiencies in Dr. Brien's February 8, 2024 report and recommended that appellant be referred for a second opinion examination to evaluate his permanent impairment.

In an April 15, 2024 report, Dr. Brien acknowledged that appellant's claim had not been accepted for chronic inflammatory demyelinating polyneuropathy. He repeated the opinion expressed in his February 8, 2024 report that utilizing Table 13-11 of the sixth edition of the A.M.A., *Guides* was appropriate for evaluating appellant's permanent impairment.

On April 24, 2024 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Jon P. Kelly, a Board-certified orthopedic surgeon, for a second opinion examination and an evaluation of the permanent impairment of appellant's upper extremities in accordance with the standards of the sixth edition of the A.M.A., *Guides*.

In an August 7, 2024 report, Dr. Kelly reported physical examination findings, noting that appellant no longer had any finger triggering. He indicated that he was evaluating the permanent impairment of appellant's upper extremities under the standards of the sixth edition of the A.M.A., *Guides*. Dr. Kelly noted that, with respect to Table 15-3 (Wrist Regional Grid), pages 395 through 400, he observed that there is no subsection for evaluating peripheral neuropathy. Without referencing any specific section of the A.M.A., *Guides* or identifying the particular upper extremity he was rating, he stated:

> "Referring to peripheral nerve impairment median nerve below mid forearm for the thumb, default C 1% upper extremity impairment. For the index finger, default C of 1% upper extremity impairment. For the ulnar aspect of the index finger default C for 1% upper extremity impairment. For the long or middle finger default C for 1% upper extremity impairment. For the ulnar aspect of the middle or long finger also default C for 1% upper extremity impairment and for the ring finger default C for 0% impairment."

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

Referencing Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449, Dr. Kelly indicated that appellant's diagnostic testing demonstrated "a conduction delay involving the sensory component" which fell under grade modifier 1. He further stated:

> "History is for constant symptoms for a grade modifier 3. Physical findings demonstrates decreased sensation for grade modifier 2. Functional scale moderately affected for a grade modifier 2. This would effectively move the scale to an E or to the right for the thumb 3% upper extremity impairment. For the index finger, radial aspect, 1%. For the index finger, ulnar aspect, 1%. For the long finger, radial aspect, 1%. For the long finger ulnar aspect 1% and for the ring finger, radial aspect, 1%."

On August 15, 2024 OWCP referred appellant's case to Dr. Katz, in his role as a DMA, and requested that he review the medical record, including Dr. Kelly's August 7, 2024 report, and provide an opinion on the permanent impairment of appellant's upper extremities. In an August 20, 2024 report, Dr. Katz stated, "On page 5 of his report, Dr. Kelly presents his impairment in a manner that cannot be deciphered by this reviewer, nor does it appear that he identifies which extremity his is rating." Dr. Katz recommended that Dr. Kelly provide a supplemental report clarifying his opinion regarding permanent impairment.

On September 11, 2024 OWCP requested that Dr. Kelly clarify his opinion regarding permanent impairment. In a supplemental report dated October 5, 2024, Dr. Kelly noted that with respect to upper extremity impairment appellant "had involvement of both upper extremities including the wrist and digits, both hands included triggering of the digits and median neuropathy." He further stated, "Both of these conditions were rated in the rating quoted is applicable to both upper extremities, both of which had undergone carpal tunnel release surgery and trigger finger release surgery but remains symptomatic."

OWCP determined that there was a conflict in the medical opinion evidence between Dr. Brien and Dr. Kelly regarding the permanent impairment of appellant's upper extremities. On November 20, 2024, in order to resolve the conflict, OWCP referred appellant, pursuant to section 8123(a) of FECA (5 U.S.C. § 8123(a)), to Dr. Jeffrey Bernicker, a Board-certified orthopedic surgeon, for an impartial medical examination and an evaluation of the permanent impairment of appellant's upper extremities in accordance with the standards of the sixth edition of the A.M.A., *Guides*. OWCP provided Dr. Bernicker with a copy of the medical record, a SOAF, and a series of questions.

In a January 28, 2025 report, Dr. Bernicker discussed appellant's factual and medical history, noting that appellant currently complained of intermittent pain in both hands and wrists, right greater than left, which radiated up into the forearms with associated numbness and tingling of the hands, including all digits.[4] He reported that the findings of his physical examination included negative Tinel's sign and Phalen's test bilaterally, and no tenderness to palpation over the incisions for the carpal tunnel release and trigger finger release surgeries. Dr. Bernicker

[4] Dr. Bernicker noted that appellant reported difficulty in performing activities of daily living in several categories, but he did not identify a specific score for *Quick*DASH, a survey described in the sixth edition of the A.M.A., *Guides* to assess the ability to perform activities of daily living. A.M.A., *Guides* 482-86.

noted that range of motion testing of both wrists yielded normal values for palmar flexion, dorsiflexion, ulnar deviation, and radial deviation. He diagnosed bilateral upper extremity industrial overuse disorder, bilateral CTS, status post bilateral carpal tunnel releases, status post trigger finger release of left ring finger, and status post A1 pulley release of the right ring finger. Dr. Bernicker maintained that appellant reached MMI in both upper extremities by November 9, 2020. However, after the January 19, 2023 trigger finger release, he did not regain MMI of the right hand until May 11, 2023. Dr. Bernicker indicated that he was evaluating the permanent impairment of appellant's upper extremities under the sixth edition of the A.M.A., *Guides*. He observed that appellant's bilateral trigger finger condition had been "completely eradicated" following his surgeries, noting that appellant had no residual symptoms relative to stenosing tenosynovitis and a normal physical examination. Dr. Bernicker stated, "As such, 0% digit/hand/upper extremity impairment is assigned for the trigger fingers." Regarding appellant's bilateral carpal tunnel releases, he advised that, utilizing Table 15-23 of the sixth edition of the A.M.A., *Guides*, appellant was assigned a grade modifier of 2 based upon the significant intermittent symptoms with confirmed decreased sensation in the median nerve distribution per Semmes-Weinstein monofilament testing. Dr. Bernicker stated, "Using this Table, [appellant] is assigned 5% Upper Extremity Impairment for each upper extremity, considering him to reside at the default impairment value within this grade modifier." He further indicated, without elaboration, that he disagreed with the impairment ratings provided by Dr. Brien and Dr. Kelly.

On February 28, 2025 OWCP referred appellant's case to Dr. Katz, in his role as a DMA, and requested that he review the medical record, including Dr. Bernicker's January 28, 2025 report, and provide an opinion on permanent impairment. In a March 7, 2025 report, Dr. Katz discussed Dr. Bernicker's January 28, 2025 report and indicated that he was utilizing Table 15-23 of the sixth edition of the A.M.A., *Guides* for impairment rating purposes. He noted that, for each upper extremity, appellant fell under a grade modifier of 2 for test findings, history, and physical findings. Dr. Katz reported that, with respect to each upper extremity, the average value for the three grade modifier values was two and indicated, without elaboration, that appellant fell under a grade modifier of 2 for "functional scale default." He indicated that the date of MMI was January 28, 2025, the date of Dr. Bernicker's examination, and concluded that appellant had five percent permanent impairment of each upper extremity. Dr. Katz advised that the net additional award now due, three percent permanent impairment for each upper extremity, was determined by subtracting the prior, overlapping award of two percent permanent impairment for each upper extremity from the present permanent impairment.

By decision dated March 17, 2025, OWCP granted appellant a schedule award for an additional three percent permanent impairment of each upper extremity, thereby compensating him for a total of five percent permanent impairment of each upper extremity. The award ran for 18.72 weeks from January 28 to June 8, 2025 and was based on the impairment rating of Dr. Bernicker, the impartial medical examiner (IME).[5]

[5] OWCP stated, "The most recently calculated ratings from Dr. Bernicker provide the basis for your increased award."

LEGAL PRECEDENT

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

Impairment due to CTS is evaluated under Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[10] In Table 15-23, grade modifier levels (ranging from zero to four) are described for the categories of test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down based on functional scale, which is an assessment of impact on activities of daily living as derived from the results of a *Quick*DASH survey.[11]

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.[12] For a conflict to arise, the opposing physicians' opinions must be of virtually equal weight and rationale.[13] In situations where the case is properly referred to an IME for the purpose of resolving the conflict, the opinion of such IME, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[14]

---

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id.*; *see V.J.,* Docket No. 1789 (issued April 8, 2020); *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] A.M.A., *Guides* (6th ed. 2009) 449.

[11] *Id.* at 448-50.

[12] 5 U.S.C. § 8123(a); *see E.L.,* Docket No. 20-0944 (issued August 30, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

[13] *P.R.*, Docket No. 18-0022 (issued April 9, 2018); *see also Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts,* 30 ECAB 1010 (1980).

[14] *See D.M.,* Docket No. 18-0746 (issued November 26, 2018); *R.H.,* 59 ECAB 382 (2008); *James P. Roberts*, *id*.

ANALYSIS

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

Preliminarily, the Board finds that OWCP improperly determined that there was a conflict in the medical opinion evidence between Dr. Brien, an attending physician, and Dr. Kelly, an OWCP referral physician, on the issue of the permanent impairment of appellant's upper extremities.

In February 8 and April 15, 2024 reports, Dr. Brien indicated that he was applying the standards of Table 13-11 (Criteria for Rating Impairments of the Upper Extremities due to CNS Dysfunction) of the sixth edition of the A.M.A., *Guides*,[15] and concluded that appellant had 17 percent permanent impairment of the right upper extremity and 9 permanent impairment of the left upper extremity. The Board notes that appellant's claim has not been accepted for CNS dysfunction or any type of brain/spinal cord lesion for which Table 13-11 provides impairment rating guidance.[16] Therefore, Dr. Brien's use of Table 13-11 would not be appropriate for evaluation of permanent impairment related to the accepted conditions of bilateral CTS and trigger finger of the left ring finger.

In August 7 and October 5, 2024 reports, Dr. Kelly also evaluated the permanent impairment of appellant's upper extremities. In his August 7, 2024 report, he provided impairment ratings related to deficits associated with multiple digits, but he did not identify which upper extremity he was rating and, for the greater portion of his impairment analysis, he did not identify which specific standards of the sixth edition of the A.M.A., *Guides* he was utilizing. Dr. Kelly did not provide a clear opinion regarding the total permanent impairment of either the right or left upper extremity. In a portion of his impairment analysis, he referenced Table 15-23 (Entrapment/Compression Neuropathy Impairment),[17] the appropriate table for evaluating permanent impairment related to CTS, but he did not provide an impairment rating that was in accordance with the rating standards of this table.

The Board has held that an opinion on permanent impairment is of limited probative value if it is not derived in accordance with the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses.[18] Neither Dr. Brien nor Dr. Kelly evaluated appellant's accepted conditions of bilateral CTS and trigger finger of the left ring finger utilizing the appropriate standards of the sixth edition of the A.M.A., *Guides*. Given the limited probative value of the reports of both Dr. Brien and Dr. Kelly, no true conflict existed in the medical opinion evidence in November 2024 when OWCP referred appellant to Dr. Bernicker for an impartial medical evaluation.[19]

---

[15] A.M.A., *Guides* 335, Table 13-11.

[16] In Section 13.5, the A.M.A., *Guides* explains that Table 13-11 is utilized to rate permanent impairment related to lesions of the brain and spinal cord. *Id.* at 335, Section 13.5.

[17] *Id.* at 449, Table 15-23.

[18] *See N.A.*, Docket No. 19-0248 (issued May 17, 2019); *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989).

[19] *See supra* notes 12 and 13.

As no true conflict regarding permanent impairment existed in the medical opinion evidence at the time of the November 2024 referral, the Board finds that Dr. Bernicker's January 28, 2025 report may not be afforded the special weight of an IME and should instead be considered for its own intrinsic value.[20] The referral to Dr. Bernicker is therefore considered to be that of a second opinion evaluation.[21]

In his January 28, 2025 report, Dr. Bernicker, indicated that he was evaluating the permanent impairment of appellant's upper extremities under the sixth edition of the A.M.A., *Guides*. He found that appellant's bilateral trigger finger condition had been "completely eradicated" following his surgeries, noting that he had no residual symptoms relative to stenosing tenosynovitis and a normal physical examination. Dr. Bernicker stated, "As such, 0% digit/hand/upper extremity impairment is assigned for the trigger fingers." Regarding appellant's bilateral carpal tunnel releases, he advised that, utilizing Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides*, appellant was assigned grade modifier 2 based upon significant intermittent symptoms with confirmed decreased sensation in the median nerve distribution per Semmes-Weinstein monofilament testing. Dr. Bernicker stated, "Using this Table, [appellant] is assigned 5% Upper Extremity Impairment for each upper extremity, considering him to reside at the default impairment value within this grade modifier." He further indicated, without elaboration, that he disagreed with the impairment ratings provided by Dr. Brien and Dr. Kelly.

As noted above, impairment due to CTS is evaluated under Table 15-23 wherein grade modifier levels (ranging from zero to four) are described for the categories of test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. Then the default rating value may be modified up or down based on functional scale, which is an assessment of impact on activities of daily living as derived from the results of a *Quick*DASH survey.[22] However, Dr. Bernicker did not adequately explain how he applied Table 15-23 to reach his conclusions regarding appellant's permanent impairment. He did not provide individual calculations for the three grade modifier categories of test findings, history, and physical findings. Nor did Dr. Bernicker provide calculations averaging the three grade modifier levels to derive the overall grade modifier level and identify a default rating value. In addition, he did not explain why his impairment assessment remained at a default rating level as opposed to being modified up or down based on the functional scale. He did not report a specific *Quick*DASH survey score assessing the impact of appellant's accepted conditions on daily living activities for the purpose of determining the functional scale. Furthermore, with respect to appellant's trigger

[20] *See S.W.*, Docket No. 21-0290 (issued November 5, 2021); *F.R.*, Docket No. 17-1711 (issued September 6, 2018); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[21] *L.G.*, Docket No. 20-0611 (issued February 16, 2021). *See also M.G.*, Docket No. 19-1627 (issued April 17, 2020); *S.M.*, Docket No. 19-0397 (issued August 7, 2019) (the Board found that at the time of the referral for an impartial medical examination there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); *see also Cleopatra McDougal-Saddler*, *id.* (the Board found that, as there was no conflict in medical opinion evidence, the report of the physician designated as the IME was not afforded the special weight of the evidence, but instead considered for its own intrinsic value as he was a second opinion specialist).

[22] *See supra* notes 10 and 11.

finger condition, Dr. Bernicker did not explain which portion of the sixth edition of the A.M.A., *Guides* he applied to evaluate permanent impairment.

Once OWCP undertakes development of the medical evidence, it must resolve the relevant issues in the case.[23] 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.[24]

The case must therefore be remanded for clarification from Dr. Bernicker, serving in his role as OWCP referral physician, regarding the permanent impairment of appellant's upper extremities. If Dr. Bernicker is unable to clarify or elaborate on his previous report, or if the supplemental report is also vague, speculative, or lacking rationale, OWCP must submit the case record and a detailed SOAF to a new second opinion physician for the purpose of obtaining a rationalized medical opinion on the issue.[25] After this and such other 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.

[23] *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).

[24] *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).

[25] *J.H.,* Docket No. 19-1476 (issued March 23, 2021); *R.O.,* Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

ORDER

IT IS HEREBY ORDERED THAT the March 17, 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: November 24, 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