

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

R.S., Appellant)
and) Docket No. 25-0699
DEPARTMENT OF THE AIR FORCE,) Issued: September 16, 2025
TINKER AIR FORCE BASE, OK, Employer)

)

Appearances:

Appellant, pro se

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

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 17, 2025 appellant filed a timely appeal from a July 16, 2025 merit 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.²

ISSUE

The issue is whether appellant has met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 16, 2025 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference.

On December 10, 2020 appellant, then a 59-year-old production machinery mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed cancer due to factors of his federal employment, including exposure to heavy metals such as chromium and cadmium. He noted that he first became aware of his condition on July 28, 2020, and realized its relation to his federal employment on November 20, 2020. On December 13, 2022 OWCP accepted the claim for marginal zone lymphoma.

In a January 30, 2023 report, Dr. M. Stephen Wilson, a Board-certified orthopedic surgeon, recounted a history of appellant's occupational exposure and medical treatment. He referenced Table 9-13 (Criteria for Rating Impairment due to Lymphoma and Metastatic Disease), page 209 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁴ to find a Class 3 impairment caused by marginal zone lymphoma, which equaled 35 percent whole person impairment.

In a June 15, 2023 report, Dr. Wilson diagnosed a pulmonary embolism due to complications of surgical and medical care, malignant neoplasm of right kidney and renal pelvis/ureter, malignant neoplasm of left kidney, neoplastic/malignant related fatigue, and disorder of urinary system. He opined that the additional conditions should be accepted as causally related to the accepted condition of marginal zone lymphoma.⁵

On June 21, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated July 14, 2023, OWCP requested that appellant submit a permanent impairment evaluation from his attending physician addressing whether he had reached maximum medical improvement (MMI), the diagnosis on which impairment was based, a detailed description of all pertinent clinical findings, a comprehensive description of any permanent impairment, and an impairment rating using the A.M.A., *Guides*. It afforded him 30 days to submit the necessary evidence.

In response, OWCP received reports dated July 17, 2023 wherein Dr. Wilson opined that appellant reached MMI as of January 30, 2023. Dr. Wilson found 37 percent whole person impairment based on the accepted occupational condition of marginal zone lymphoma. He again requested that acceptance of appellant's claim be expanded to include pulmonary embolism due

³ Docket No. 24-0642 (issued January 31, 2025); Docket No. 22-0087 (issued April 19, 2022).

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ Dr. Wilson reiterated this opinion in periodic reports dated September 14, 2023 through April 25, 2024.

to complications of surgical and medical care, malignant neoplasm of right kidney and renal/pelvis ureter, malignant neoplasm of the left kidney, and disorder of the urinary system.

On November 6, 2023 OWCP routed the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Michael Minev, an internist serving as an OWCP district medical adviser (DMA), to determine any permanent impairment caused by the accepted marginal zone lymphoma. The DMA was also asked to indicate for schedule award purposes the permanent functional loss of the lung and kidneys.

In a November 20, 2023 report, Dr. Minev referenced Table 9-13 of the A.M.A., *Guides* to find 35 percent permanent impairment of the whole person due to marginal zone lymphoma.

On April 8, 2024 OWCP requested that Dr. Minev provide a supplemental report expressing the impairment rating as the percentage of permanent impairment of the kidneys, as there was no provision for whole person impairment under FECA.

In an April 22, 2024 report, Dr. Minev indicated that as marginal zone lymphoma was a malignancy of the hematologic system, it was “not possible to express the impairment rating due to [m]arginal [z]one [l]ymphoma as an impairment rating of the kidneys.”

By decision dated May 24, 2024, OWCP denied appellant’s claim for a schedule award, finding that the medical evidence did not establish a permanent impairment of a scheduled member or function of the body.

Appellant appealed to the Board. During the pendency of the prior appeal, OWCP received a November 1, 2023 computerized tomography (CT) scan of the chest, which revealed a borderline ascending thoracic aortic aneurysm, possible left pelviectasis and inflammation, right nephrolithiasis and pelvic fullness, and enlarged liver with steatosis.

An April 17, 2024 bronchoscopy performed to address a history of hemoptysis revealed normal airway anatomy with “petechiae present in bilateral left and right mainstem likely from chronic cough.”

A June 4, 2024 CT scan of the abdomen and pelvis revealed bilateral dependent subsegmental atelectasis/scarring of the lungs, enlargement of the heart with no pericardial effusion, bilateral nephrolithiasis with no evidence of hydronephrosis or obstructive uropathy, a 7.5 mm node in the inferior pole of the right kidney, hepatic steatosis, diverticulosis coli with no inflammatory changes, and other nonacute findings.

In reports dated June 27 through December 23, 2024, Dr. Wilson related that appellant had a respiratory/pulmonary injury due to accepted occupational marginal zone lymphoma, and a pulmonary embolus as a complication of chemotherapy to treat the accepted lymphoma. He opined that the accepted occupational disease had also resulted in a “[p]ulmonary embolism due to complications of surgical and medical care,” malignant neoplasm of the right kidney, renal pelvis, and ureter, malignant neoplasm of the left kidney, disorder of the urinary system, and neoplastic, malignant-related fatigue. In his report dated December 23, 2024, Dr. Wilson also

related that appellant's current examination of the lungs showed significant shortness of breath, with very minimal air movement in the upper lobes.

In statements dated December 8, 2024 and January 8, 2025, appellant contended that there was substantial evidence of record that chemotherapy he had undergone to treat his accepted lymphoma had caused kidney failure, kidney disease, blood clots, and pulmonary failure.

By decision dated January 31, 2025, the Board set aside OWCP's May 24, 2024 decision and remanded the case for referral to a second opinion physician in the appropriate field of medicine to provide a well-rationalized opinion as to whether appellant had any permanent impairment of the kidney and/or other permanent impairment of a scheduled member, to be followed by issuance of a *de novo* decision.

On January 29, 2025 OWCP prepared an updated SOAF, which related that the claim was accepted for marginal zone lymphoma. It noted other medical conditions of pulmonary embolus and hemophysis. On January 29, 2025 OWCP referred appellant, the SOAF, the medical records, and a series of questions to Dr. Kenneth Trinidad, an osteopath Board-certified in internal medicine, for a second opinion evaluation to determine permanent impairment. It again noted that the accepted condition was marginal zone lymphoma; however, it also requested that Dr. Trinidad perform an impairment evaluation of the kidneys and any other permanent impairment of a scheduled member using the A.M.A., *Guides*.

Thereafter, OWCP received a July 7, 2024 hospital emergency department report by Dr. Ahmed A. Aziz, a Board-certified internist, wherein he related appellant's history of mantle cell lymphoma diagnosed in 2020, status post chemotherapy. Dr. Aziz diagnosed sinus bradycardia, rhabdomyolysis, acute encephalopathy, systemic inflammatory response syndrome (SIRS), acute kidney injury, metabolic acidosis, mantle cell lymphoma, diastolic dysfunction, history of pulmonary embolism, and hypertension.

OWCP also received hospital reports dated July 7 through 14, 2024 regarding appellant's inpatient treatment for renal failure and rhabdomyolysis.

In a February 17, 2025 report, Dr. Wilson reiterated prior diagnoses.

Dr. Trinidad completed a report on March 18, 2025, wherein he related appellant's history of injury and medical treatment. He noted the accepted condition of marginal zone lymphoma. Dr. Trinidad related that appellant had been hospitalized on multiple occasions for recurrent respiratory failure and utilized home oxygen. He noted that appellant "had been told his respiratory symptoms, pulmonary emboli and deep vein thrombosis have resulted from his chemotherapy." On examination, Dr. Trinidad observed that appellant had shortness of breath, and decreased breath sounds bilaterally. He opined that appellant had "developed complications from the chemotherapy with respiratory involvement, now requiring supplemental oxygen and medications." Referring to Table 9-13 of the A.M.A., *Guides*, Dr. Trinidad found a Class 3 diagnosis-based impairment for marginal zone lymphoma treated with six cycles of chemotherapy, which equaled 35 percent whole person impairment.

On April 22, 2025, OWCP requested that Dr. Trinidad provide a supplemental report expressed in terms of loss of use of the affected scheduled members or functions of the body, and not as a whole person impairment, utilizing the A.M.A., *Guides*.

In a May 1, 2025 report, Dr. Trinidad explained that he could not specify “specific affected members” as marginal zone lymphoma was a metastatic cancer that affected the “body as a whole” rather than “any one specific body part.” He also related that his prior 35 percent whole person impairment rating was provided under the sixth edition of the A.M.A., *Guides*.

On May 12, 2025 OWCP referred the medical record, including Dr. Trinidad’s second opinion reports, and a SOAF, to Dr. Minev, the DMA. He was asked to indicate for schedule award purposes any permanent functional loss of use due to the diagnosis of marginal zone lymphoma.

In a May 12, 2025 report, Dr. Minev found that appellant reached MMI on March 18, 2025. He reiterated that appellant had 35 percent permanent impairment of the whole person due to accepted condition of marginal zone lymphoma.

By decision dated July 16, 2025, OWCP denied appellant’s schedule award claim. It found that the evidence of record did not establish a permanent impairment of a scheduled member or function of the body.

LEGAL PRECEDENT

The schedule award provisions of FECA⁶ and its implementing regulations⁷ 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. 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

It is the claimant’s burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.¹⁰ OWCP’s procedures provide that, to support a schedule award, the file must contain competent medical evidence, which shows that the impairment has reached a permanent and fixed state and indicates that the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be

⁶ *Supra* note 1.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.* at 10.404(a).

⁹ 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).

¹⁰ *V.D.*, Docket No. 22-0123 (issued April 20, 2023); *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.¹¹

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or the implementing regulations.¹² The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.¹³ By authority granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix, vulva/vagina, and skin.¹⁴ Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the body as a whole.¹⁵

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and extent of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹⁶

ANALYSIS

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

In the January 31, 2025 decision, the Board remanded the case for referral to a second opinion physician in the appropriate field of medicine to provide a well-rationalized opinion as to whether appellant had any permanent impairment of the kidney and/or other permanent impairment of a scheduled member or function of the body.

OWCP selected Dr. Trinidad for a second opinion evaluation. Dr. Trinidad opined in his March 18, 2025 report that, based on Table 9-13 of the sixth edition of the A.M.A., *Guides*, appellant had a Class 3 diagnosis-based impairment for marginal zone lymphoma treated with six cycles of chemotherapy, which was the equivalent of a 35 percent whole person impairment. In his May 1, 2025 supplemental report, he explained that he could not specify "specific affected members" as marginal zone lymphoma was a metastatic cancer that affected the "body as a whole" rather than "any one specific body part." Dr. Trinidad reiterated his prior opinion regarding appellant's 35 percent whole person impairment.

¹¹ *Supra* note 9 at Chapter 2.808.5 (March 2017).

¹² *D.L.*, Docket No. 20-0059 (issued July 8, 2020); *W.C.*, 59 ECAB 374 (2008); *Anna V. Burke*, 57 ECAB 521 (2006).

¹³ 5 U.S.C. § 8107(c).

¹⁴ 20 C.F.R. § 10.404(b).

¹⁵ 20 C.F.R. § 10.404(a) and (b); *see N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

¹⁶ *V.K.*, Docket No. 21-1006 (issued September 25, 2023); *D.C.*, Docket No. 23-0455 (issued August 28, 2023); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

OWCP routed the medical record to the DMA, Dr. Minev, to address whether appellant had any permanent functional loss of use due to the diagnosis of marginal zone lymphoma. In a May 12, 2025 report, Dr. Minev found that appellant reached MMI on March 18, 2025, the date of Dr. Trinidad's examination. He reiterated that appellant had 35 percent permanent impairment of the whole person due to the accepted condition of marginal zone lymphoma.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. OWCP shares responsibility in the development of the evidence and has an obligation to see that justice is done.¹⁷ 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.¹⁸

Neither Dr. Trinidad, the second opinion physician, nor Dr. Minev, OWCP's second opinion physician, provided appellant's permanent impairment rating in terms of a scheduled member or function of the body, pursuant to OWCP's regulations.¹⁹ As such, the case must be remanded for further medical development.

On remand, OWCP shall refer appellant, together with a SOAF, and the case record to a new second opinion physician in the appropriate field of medicine, for a well-rationalized medical opinion as to whether appellant has any permanent impairment of a scheduled member or function of the body warranting a schedule award. 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.

¹⁷ *D.L.*, Docket No. 20-1299 (issued May 5, 2022); *J.H.*, Docket No. 19-1476 (issued March 23, 20201); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *John J. Caralone*, 41 ECAB 354, 358-60 (1989).

¹⁸ See *V.H.*, Docket No. 23-1013 (issued July 24, 2025); *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

¹⁹ See 20 C.F.R. § 10.404.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 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: September 16, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board