United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 25-0701**
	)	**Issued: September 11, 2025**
DEPARTMENT OF DEFENSE, HICKAM COMMISSARY, HICKAM AIR FORCE BASE, HI, 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
JANICE B. ASKIN, Judge

JURISDICTION

On July 2, 2025 appellant filed a timely appeal from a June 10, 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.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the June 10, 2025 decision, appellant submitted additional evidence with her appeal to the Board. 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*.

ISSUE

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

FACTUAL HISTORY

On August 18, 2022 appellant, then a 65-year-old meatcutter, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2022 he injured his right shoulder when lifting a 90-pound case of ribeye while in the performance of duty. He stopped work on August 10, 2022 and returned to work on August 15, 2022.[3] OWCP accepted appellant's claim for complete rotator cuff tear or rupture of right shoulder, not specified as traumatic; strain of muscles(s) and tendon(s) of the rotator cuff of right shoulder; strain of muscle, fascia and tendon of long head of biceps, right arm; superior glenoid labrum lesion of right shoulder; and strain of muscles(s) and tendon(s) of the rotator cuff of right shoulder.

On July 7, 2023 appellant underwent an OWCP-authorized right shoulder arthroscopic rotator cuff repair, supraspinatus and subscapularis tendon with Regeneten implant and right shoulder arthroscopy, decompression.

In a July 29, 2024 report, Dr. Gary Y. Okamura, a Board-certified orthopedic surgeon, opined that appellant was at maximum medical improvement (MMI) but advised that he did not perform impairment ratings.

On October 4, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated October 7, 2024, OWCP informed appellant of the deficiencies of his schedule award claim. It advised him of the type of medical evidence needed, including an impairment evaluation in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] and afforded him 30 days to respond.

On February 11, 2025 OWCP referred appellant, along with the medical record, an October 7, 2024 statement of accepted facts (SOAF), and a series of questions, to Dr. Michael J. Battaglai, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation regarding his permanent impairment under the standards of the sixth edition of the A.M.A., *Guides*.

In a March 3, 2025 report, Dr. Battaglai reviewed the medical record and the October 7, 2024 SOAF. He noted examination findings of normal sensation throughout bilateral shoulders, no tenderness to palpation of his acromioclavicular (AC) joint, no bicipital tenderness, negative Speed's and negative Yergason's test, and good rotator cuff strength, but advised lift-off was

[3] OWCP assigned the present claim OWCP File No. xxxxxx214. Under OWCP File No. xxxxxx079, OWCP accepted the conditions of right shoulder sprain and right rotator cuff tear. By decision dated December 2, 2014, OWCP granted appellant seven percent permanent impairment of his right upper extremity (shoulder/upper arm). Under OWCP File No. xxxxxx237, OWCP accepted a mallet finger of the right middle index finger and, by decision dated October 19, 2015, granted him seven percent permanent impairment of the right middle finger (2nd digit).

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

difficult and painful. Dr. Battaglai also performed three range of motion (ROM) measurements with the goniometer for measuring the bilateral shoulders for both the right and left upper extremities, which he found were symmetric. He diagnosed a resolved rotator cuff tear and opined that appellant had reached MMI on March 3, 2025, the date of his examination. For appellant's right shoulder condition, Dr. Battaglai indicated that under the diagnosis-based impairment (DBI) rating method, the appropriate class of diagnosis (CDX) for rotator cuff injury, full-thickness tear under Table 15-5 (Shoulder Regional Grid), page 403 was a class 1E impairment, which resulted in seven percent permanent impairment. He explained that appellant had a grade modifier for functional history (GMFH) of 2; a grade modifier for physical examination (GMPE) of 2; and that a grade modifier for clinical studies (GMCS) was not applicable as it was used to place the impairment class. Dr. Battaglai utilized the net adjustment formula, which resulted in seven percent permanent impairment of the right upper extremity. He found that the ROM impairment method was not applicable due to appellant's symmetric ROM.

On April 17, 2025 OWCP referred Dr. Battaglai's report to Dr. Herbert White, Jr., a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). In his April 26, 2025 report, Dr. White noted his review of the October 7, 2024 SOAF and the medical record, noting that appellant has a previous right upper extremity award of seven percent permanent impairment under OWCP File No. xxxxxx079 and a previous right middle finger award of seven percent permanent impairment under OWCP File No. xxxxxx237. He opined that appellant reached MMI on March 3, 2025, the date of Dr. Battaglai's impairment evaluation. Under the DBI rating method, Dr. White concurred with Dr. Battaglai's finding of seven percent permanent right upper extremity impairment for a full thickness rotator cuff tear under Table 15-5 of the A.M.A. *Guides*. He also applied ROM rating method of Table 15-34 (Shoulder Range of Motion) of the A.M.A., *Guides*. Dr. White explained, for both the right and left extremities, flexion of 140 degrees equaled three percent impairment; extension of 30 degrees equaled one percent impairment; an abduction of 120 degrees equaled three percent impairment; adduction of 20 degrees equaled one percent impairment; internal rotation of 40 degrees equaled four percent impairment; and external rotation of 50 degrees equaled two percent impairment. He opined that since the ROM was equal for both the right and left upper extremities, there was no calculable ROM impairment of the right upper extremity. Dr. White noted that while appellant had previously received a right upper extremity award of seven percent permanent impairment, he was unable to determine whether there was additional impairment as he did not know the region of the upper extremity impairment previously awarded.

On May 13, 2025 OWCP requested an addendum report from Dr. White, noting that appellant had previously been awarded compensation for seven percent permanent impairment of the right upper extremity (arm) and seven percent permanent impairment of the right middle finger 2nd digit/finger.

On May 14, 2025 OWCP administratively combined OWCP File Nos. xxxxxx079, xxxxxx237, and xxxxxx214, with the latter serving as the master file.

In a May 25, 2025 addendum, Dr. White noted his review of the October 7, 2024 SOAF and the medical record, including Dr. Battaglia's March 3, 2025 impairment report. He noted that appellant has a previous right upper extremity award of seven percent permanent impairment under OWCP File No. xxxxx079 for the right arm and a previous right middle finger award of seven percent permanent impairment under OWCP File No. xxxxxx237. Dr. White opined that appellant reached MMI on March 3, 2025, the date of Dr. Battaglia's impairment evaluation. He concurred with Dr. Battaglia's right upper extremity impairment rating of seven percent impairment under

the DBI rating method and zero percent impairment under the ROM rating method. Dr. White opined that as the DBI rating method produced the higher impairment rating, appellant had seven percent permanent impairment of the right upper extremity. He further opined that no additional right upper extremity impairment was incurred under Section 2.5c (Apportionment) of the A.M.A., *Guides*, page 25. From the total impairment of seven percent right upper extremity impairment, Dr. White subtracted the seven percent prior award for appellant's right arm and found that zero percent right upper extremity impairment or no additional award was due.

By decision dated June 10, 2025, OWCP denied appellant's claim for an increased schedule award. The weight of the medical evidence was accorded to the opinions of Dr. Battaglia and Dr. White.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing regulations[6] 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[7] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[8] 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.[9]

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 regard to the shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the CDX is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using a GMFH, a GMPE, and/or a GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10]

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id. See also A.S.,* Docket No. 20-1068 (issued April 15, 2025); *R.C.,* Docket No. 20-0274 (issued May 13, 2021); *Ronald R. Kraynak,* 53 ECAB 130 (2001).

[8] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

[9] *A.S., supra* note 11; *P.R.,* Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera,* 12 ECAB 348 (1961).

[10] *See* A.M.A., *Guides* 405-12. Table 15-5 also provides that, if motion loss is present for a claimant with certain diagnosed conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such a ROM assessment stands alone and is not combined with a DBI rating. *Id.* at 401-05, 475-78.

Regarding the application of the 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).
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> "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*. (Emphasis in the original.)"
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> The FECA Bulletin further provides:
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> "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 methods and identify the higher rating for the CE.
>
> "If the medical evidence of record is not sufficient for the DMA to render a rating on ROM where allowed, the DMA should advise as to the medical evidence necessary to complete the rating. However, the DMA should still render an impairment rating using the DBI method, if possible, given the available evidence.[11]"

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 the medical adviser providing rationale for the percentage of impairment specified.[12]

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.[13]

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

[12] *See supra* note 8 at Chapter 2.808.6f (March 2017); *see also D.J.,* Docket No. 19-0352 (issued July 24, 2020).

[13] 20 C.F.R. § 10.404(d); *see J.S.,* Docket No. 23-0579 (issued January 30, 2024); *S.M.,* Docket No. 17-1826 (issued February 26, 2018); *T.S.,* Docket No. 16-1406 (issued August 9, 2017); *T.S.,* Docket No. 09-1308 (issued December 22, 2009).

ANALYSIS

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

On February 11, 2025 OWCP referred appellant, along with the medical record, an October 7, 2024 SOAF, and a series of questions, to Dr. Battaglai for a second opinion examination and evaluation regarding his permanent impairment under the standards of the sixth edition of the A.M.A., *Guides.* In his March 3, 2025 report, Dr. Battaglai noted examination findings and opined that appellant had reached MMI. Under the DBI methodology for the right shoulder, he utilized the net adjustment formula and found that appellant had seven percent permanent impairment of the right upper extremity. Dr. Battaglai further opined that ROM impairment method was not applicable due to appellant's symmetric ROM. Subsequently, OWCP administratively combined OWCP File Nos. xxxxxx079, xxxxxx237, and xxxxxx214, with the latter serving as the master file. However, it did not provide Dr. Battagali with an updated SOAF which included information regarding the combined files and the prior schedule awards under those claims.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.[14] While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[15] As OWCP undertook development of the evidence by referring appellant to a DMA, it had an obligation to do a complete job and obtain a proper evaluation and report that would resolve the issue in this case.[16]

The case must therefore be remanded for further development of the medical evidence. On remand, OWCP shall provide Dr. Battagali with the case record, along with an updated SOAF which includes information regarding appellant's prior claims under OWCP File Nos. xxxxxx079 and xxxxxx237 and the prior schedule awards issued therein. It shall then obtain a supplemental opinion from Dr. Battagali, which explains whether and/or how appellant's current right upper extremity impairment duplicates the prior schedule awards. 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.

[14] *N.L.,* Docket No. 19-1592 (issued March 12, 2020); *M.T.,* Docket No. 19-0373 (issued August 22, 2019); *B.A.,* Docket No. 17-1360 (issued January 10, 2018).

[15] *S.S.,* Docket No. 18-0397 (issued January 15, 2019); *Donald R. Gervasi,* 57 ECAB 281, 286 (2005); *William J. Cantrell,* 34 ECAB 1233, 1237 (1983).

[16] *G.M.,* Docket No. 19-1931 (issued May 28, 2020); *W.W.,* Docket No. 18-0093 (issued October 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2025 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 11, 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