

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

P.S., Appellant)
and) Docket No. 25-0725
DEPARTMENT OF HOMELAND SECURITY,)
U.S. IMMIGRATION AND CUSTOMS)
ENFORCEMENT, Buffalo, NY, Employer)
Issued: September 17, 2025
)

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 23, 2025 appellant filed a timely appeal from a June 23, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish greater than 24 percent permanent impairment of the left upper extremity, for which he previously received a

¹ Appellant's appeal request included a June 20, 2025 OWCP decision. The Board notes, however, that there is no decision of record dated June 20, 2025.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the June 23, 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.*

schedule award; and (2) whether OWCP properly determined appellant's pay rate for schedule award purposes.

FACTUAL HISTORY

On November 2, 2023 appellant, then a 35-year-old deportation officer, filed a traumatic injury claim (Form CA-1) alleging that on October 27, 2023 he sustained a left wrist fracture when the motorcycle he was operating was struck by a vehicle while in the performance of duty. He stopped work on October 28, 2023.

An October 27, 2023 x-ray of appellant's left wrist revealed a left distal radius fracture with carpal dislocation.

On October 27, 2023 appellant underwent left median nerve release at the level of the wrist with neurolysis, open reduction left perilunate fracture dislocation, open reconstruction of the left scapholunate ligament and left lunotriquetral ligament, percutaneous pinning of left distal radius fracture, and left posterior interosseous neurectomy.

Appellant returned to full-time, modified-duty work with restrictions on December 4, 2023.

In a December 15, 2023 visit note, Dr. Stefanos F. Haddad, a Board-certified orthopedic surgeon, related that he performed an OWCP-authorized surgical removal of a fixation wire that had migrated through appellant's skin.

On December 29, 2023 OWCP accepted the claim for displaced fracture of lunate (semilunar), left wrist, initial encounter for closed fracture.

On January 15, 2024 Dr. Haddad performed OWCP-authorized removal of fixation hardware and manipulation of the left wrist.

In an April 17, 2024 report, Dr. Haddad found limited range of left wrist flexion and extension, and slight tenderness to palpation of the ulnar aspect of the wrist. He returned appellant to activities as tolerated.

In an October 31, 2024 report, Dr. Haddad found 40 to 45 degrees left wrist extension, 40 degrees of wrist flexion, 15 degrees radial deviation, and 20 degrees ulnar deviation. He opined that appellant had attained maximum medical improvement (MMI) and had 25 percent permanent impairment of the left upper extremity.

On December 27, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award. On the reverse side of the claim form, the employing establishment noted that on October 27, 2023, the date of injury and the date on which appellant stopped work, he was a Grade 12, Step 2 employee with annual base pay of \$87,759.00 and administratively uncontrollable overtime (AUO) pay of \$21,939.75 a year.

On January 22, 2025 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Jonathan Paul, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of appellant's left upper extremity permanent impairment utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a March 14, 2025 report, Dr. Paul noted his review of the SOAF and medical record. On examination of appellant's left wrist, he observed markedly positive Tinel's and Phalen's tests, diffuse tenderness to palpation of the carpus, carpal instability with radial and ulnar deviation, crepitus, and moderate atrophy of the thenar eminence. Dr. Paul utilized a goniometer to obtain range of motion measurements of the left wrist of 48 degrees dorsiflexion, 44 degrees palmar flexion, 14 degrees radial deviation, 10 degrees ulnar deviation, and 90 degrees pronation. He opined that appellant had attained MMI effective March 14, 2025. Referring to Table 15-3 (Wrist Regional Grid: Upper Extremity Impairments), p. 396 of the A.M.A., *Guides*, Dr. Paul noted that the class of diagnosis (CDX) for displaced fracture of lunate with severe carpal instability was a Class 2, grade C impairment, with a default rating of 24 percent. He assigned a grade modifier for functional history (GMFH) of 2, a grade modifier for physical examination (GMPE) of 2, and a grade modifier for clinical studies (GMCS) of 2. The net adjustment modifier was 0, and thus, he concluded that appellant had 24 percent permanent impairment of the left upper extremity. Dr. Paul then utilized the range of motion (ROM) impairment rating methodology to find 3 percent impairment for dorsiflexion at 44 degrees, 3 percent impairment for palmar flexion at 44 degrees, 1 percent impairment for radial deviation at 14 degrees, and 4 percent impairment for ulnar deviation at 10 degrees, which totaled 11 percent permanent impairment of the left upper extremity based on limited ROM. He therefore found that the diagnosis-based impairment (DBI) methodology was more appropriate as it provided the greater percentage of impairment.

On May 12, 2025 OWCP referred appellant's claim to Dr. William Tontz, Jr., a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA), to review the medical evidence of record and calculate the percentage of permanent impairment.

In a May 22, 2025 report, Dr. Tontz concurred with Dr. Paul's finding of MMI, his application of the A.M.A., *Guides*, the assignment of CDX grade and class, the assignment of grade modifiers, and his calculation of 24 percent permanent impairment of the left upper extremity utilizing the DBI impairment rating methodology. He explained that the DBI methodology was the most appropriate rating method in appellant's case.

In a June 20, 2025 schedule award payment memorandum, OWCP calculated the amount of appellant's schedule award compensation based on an effective date of October 27, 2023, and a weekly base pay rate of \$1,687.67 with no premium pay.

In a letter dated June 20, 2025, appellant contended that his AUO should be included with his base salary to determine his pay rate. He explained that his annual pay rate with the AUO included was \$109,619.64. Thereafter, OWCP received appellant's November 16, 2023 earnings and leave statement for the pay period October 22 through November 4, 2023, which revealed that he worked 36 hours regular time, 2 hours night differential, and 10.5 hours AUO. He also utilized 44 hours of sick leave.

By decision dated June 23, 2025, OWCP granted appellant a schedule award for 24 percent permanent impairment of the left upper extremity. It accorded the special weight of the medical evidence to Dr. Tontz as DMA. The period of the award ran from March 14, 2025 through August 20, 2026, based on his pay rate as of October 27, 2023. OWCP further determined that appellant was entitled to the basic compensation rate of 66 2/3 percent (or 2/3) of his weekly pay rate of \$1,687.67, resulting in \$1,156.50 in compensation per week, (an initial payment of \$15,364.93 for the period March 14 through June 14, 2025, and continuing payments every four weeks of \$4,626.00).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, is used to calculate schedule awards.⁷

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.⁸ 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 impairment rating for the diagnosis in question, the method producing the higher rating should be used.”⁹ (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 $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.¹⁰ 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.¹¹

⁴ *Supra* note 2.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.*; see also Jacqueline S. Harris, 54 ECAB 139 (2002).

⁷ 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).

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

⁹ *Id.*

¹⁰ 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.

¹¹ *Id.* at 23-28.

The A.M.A., *Guides* also provide 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.¹² 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.¹³ 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.¹⁴

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).”¹⁵

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 impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish greater than 24 percent permanent impairment of the left upper extremity for which he previously received a schedule award.

In accordance with its procedures, OWCP referred the evidence of record to Dr. Paul for a second opinion examination and permanent impairment evaluation. On March 14, 2025 Dr. Paul examined appellant to rate his left upper extremity permanent impairment. Based upon the Class 2, grade C CDX for displaced fracture of lunate with severe carpal instability, he assigned a GMFH of 2, GMPE of 2, and GMCS of 2, resulting in a net adjustment of 0. Dr. Paul calculated 24 percent permanent impairment of the left upper extremity under the DBI impairment rating methodology. He also utilized the ROM impairment rating method to find a 3 percent impairment for dorsiflexion at 44 degrees, 3 percent impairment for palmar flexion at 44 degrees, 1 percent impairment for radial deviation at 14 degrees, 4 percent impairment for ulnar deviation at 10 degrees, which totaled 11 percent permanent impairment of the left upper extremity based on limited range of

¹² *Id.* at 461.

¹³ *Id.* at 473.

¹⁴ *Id.* at 474.

¹⁵ *Id.* at 544.

¹⁶ See *supra* note 8 at Chapter 2.808.6(f) (March 2017); see also C.J., Docket No. 25-0440 (issued May 12, 2025); 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).

motion. As the DBI rating methodology resulted in a greater impairment rating, Dr. Paul concluded that appellant had 24 percent permanent impairment of the left upper extremity.

On May 22, 2025 Dr. Tontz reviewed the March 14, 2025 report from Dr. Paul. He opined that MMI was reached as of the date of Dr. Paul's impairment evaluation. Dr. Tontz concurred with all elements of Dr. Paul's calculation of 24 percent permanent impairment of the left upper extremity utilizing the DBI impairment rating methodology, and that the DBI impairment rating methodology was most appropriate.

Dr. Tontz and Dr. Paul appropriately applied the DBI methodology in accordance with the sixth edition of the A.M.A., *Guides* in determining that appellant had 24 percent permanent impairment of the left upper extremity. Both explained that the DBI impairment rating methodology was the most appropriate.¹⁷

As the medical evidence of record does not establish greater than the 24 percent permanent impairment of the left upper extremity previously awarded, the Board finds that appellant has not met his burden of proof to establish entitlement to a greater schedule award.¹⁸

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.

LEGAL PRECEDENT -- ISSUE 2

Under FECA, monetary compensation for disability or impairment due to an employment injury is paid as a percentage of the pay rate.¹⁹ Section 8101(4) provides that monthly pay means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.²⁰

In computing pay rate, section 8114(e) provides for the inclusion of certain premium pay received and, where the evidence indicates additional amounts received in Sunday premium or night differential pay fluctuated or may have fluctuated, OWCP determines the amount of additional pay received during the one-year period prior to injury.²¹ When the job held at the time of injury includes elements of pay such as night or shift differential, extra compensation for work

¹⁷ *C.J., id.; see D.B.*, Docket No. 24-0168 (issued April 19, 2024).

¹⁸ See *C.J., id.; P.S.*, Docket No. 22-1051 (issued May 4, 2023); *M.H.*, Docket No. 20-1109 (issued September 27, 2021); *R.H.*, Docket No. 20-1472 (issued March 15, 2021); *L.D.*, Docket No. 19-0495 (issued February 5, 2020).

¹⁹ *Supra* note 2 at §§ 8105-8107.

²⁰ *Id.* at § 8101(4). *K.B.*, Docket No. 13-0569 (issued June 17, 2013).

²¹ 5 U.S.C. § 8114(e); *G.H.*, Docket No. 19-0770 (issued March 5, 2020); *Lottie M. Williams*, 56 ECAB 302 (2005).

performed on Sundays and holidays, or pay for AUO, OWCP must include the additional pay in the base pay.²²

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision as to whether OWCP properly calculated appellant's pay rate for schedule award purposes.

As noted above, OWCP's procedures provide that the pay rate date for schedule awards, if there is no prior disability, is the date of injury.²³ Appellant has not received wage-loss compensation from OWCP for any period of disability due to his accepted employment injury. Consequently, OWCP properly determined that his pay rate date for schedule award purposes was October 27, 2023.

In calculating appellant's schedule award pay rate, the employing establishment noted on the December 27, 2024 CA-7 claim form that appellant's annual salary as of October 27, 2023 was \$87,759.00, which equaled a weekly pay rate of \$1,687.67. It further noted that he received AUO pay of \$21,939.75 a year. Pursuant to OWCP procedures, AUO should be included with his base salary to determine appellant's pay rate.²⁴ Appellant explained that his annual pay rate with the AUO included was \$109,619.64. His November 16, 2023 earnings and leave statement for the pay period October 22 through November 4, 2023 documented that he worked 2 hours night differential, and 10.5 hours AUO. However, OWCP did not include appellant's AUO pay in determining his pay rate from the employing establishment regarding appellant's night differential premium pay.²⁵

As OWCP failed to consider appellant's AUO pay in relation to the schedule award pay rate, the Board finds that the case must be remanded to OWCP for further development on this issue. On remand, OWCP shall recalculate appellant's schedule award pay rate, accounting for his AUO pay, to be followed by a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 24 percent permanent impairment of the left upper extremity, for which he previously received a schedule award. The Board further finds that this case is not in posture for decision with regard to appellant's pay rate for schedule award purposes.

²² 5 U.S.C. § 8114(e); *Supra* note 7 at Chapter 2.900.6.b(7), *Claims, Determining Pay Rates, Elements Included in Pay Rate* (March 2011).

²³ *Supra* note 7 at Chapter 2.900.5c (September 2011); *see also* L.B., Docket No. 25-0165 (issued January 21, 2025); E.F., Docket No. 23-0505 (issued October 11, 2024).

²⁴ *Supra* note 22.

²⁵ C.B., Docket No. 24-0757 (issued August 30, 2024); N.P., Docket No. 23-0258 (issued August 11, 2023).

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2025 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 17, 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