United States Department of Labor
Employees' Compensation Appeals Board

F.O., Appellant	)	
and	)	**Docket No. 25-0733**
	)	**Issued: September 9, 2025**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, Carrizo Springs, TX, 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 25, 2025 appellant filed a timely appeal from a June 20, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees'

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). He did not set forth his reasons for requesting oral argument. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence required. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would not serve a useful purpose. Therefore, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

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.[3]

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.

FACTUAL HISTORY

On September 20, 2021 appellant, then a 53-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2021 he contracted COVID-19 while in the performance of duty. He stopped work on September 20, 2021. On December 7, 2021 OWCP accepted the claim for COVID-19. It paid appellant compensation on the supplemental rolls commencing November 2, 2021.

In a February 18, 2022 report, Dr. Randall C. Bell, Board-certified in internal medicine and pulmonary disease, ordered spirometry and membrane diffuse capacity testing to assess appellant's continuing shortness of breath. In a March 1, 2022 report, Dr. Bell recounted a history of slowly improving mild dyspnea caused by COVID-19.

Appellant returned to full-time light-duty work with restrictions effective April 26, 2022.

On November 5, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support thereof, appellant submitted an undated report wherein Dr. Kevin Uptergrove, Board-certified in family practice, related appellant's history of hypoxic respiratory failure due to COVID-19 infection and treatment. He noted that appellant's December 8, 2021 pulmonary function testing revealed moderate restrictions and severe reduction in effusion, improved as of a March 1, 2022 study. As of his July 21, 2022 examination, appellant was able to tolerate light-duty work, but continued to experience fatigue and shortness of breath. A chest x-ray revealed "moderate chronic fibrosis." Physical therapy for pulmonary rehabilitation improved appellant's condition such that he was returned to full duty with no restrictions, effective September 26, 2022. Dr. Uptergrove opined that appellant still had "underlying pulmonary fibrosis as a sequela from his illness from COVID[-]19."

In a letter dated February 24, 2025, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Sujatha Gerineni, a

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that following the June 20, 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*.

Board-certified internist, for a second opinion permanent impairment evaluation. It requested that she state the findings from appellant's history, physical examination, and diagnostic testing, and conduct a permanent impairment rating, if indicated.

In a March 25, 2025 report, Dr. Gerineni related appellant's history of injury and accepted condition, including hospital and home treatment with oxygen and steroids. She noted appellant's diagnoses of pneumonia due to COVID-19, acute respiratory failure with hypoxia, dyspnea, and shortness of breath. Dr. Gerineni further noted that, while the "most recent chest x-ray still shows fibrosis as sequelae of the COVID-19 infection," pulmonary function testing was back to normal levels, appellant was not desaturating, and he did not need to use albuterol inhalers. She opined that appellant reached maximum medical improvement (MMI) as of March 25, 2025. Dr. Gerineni concluded that no permanent impairment rating was applicable as no impairment was appreciated during the evaluation.

By decision dated June 20, 2025, 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. It accorded the weight of the medical evidence to Dr. Gerineni's second opinion evaluation.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing regulations[5] 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 to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.[6] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[7] 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.[8]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP district medical adviser (DMA) for an opinion concerning the nature

[4] *Supra* note 2.

[5] 20 C.F.R. § 10.404.

[6] *Id. See also Ronald R. Kraynak,* 53 ECAB 130 (2001).

[7] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id.* at Chapter 2.808.5a (March 2017).

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

and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[9]

ANALYSIS

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

In a letter dated February 24, 2025, OWCP referred appellant, along with the medical record, a SOAF, and a series of questions to Dr. Gerineni, for a second opinion permanent impairment evaluation. It requested that she state the findings from appellant's history, physical examination, and diagnostic testing, and conduct a permanent impairment rating, if indicated.

In a March 25, 2025 report, Dr. Gerineni noted appellant's diagnoses of pneumonia due to COVID-19, acute respiratory failure with hypoxia, dyspnea, and shortness of breath. She indicated that, while the "most recent chest x-ray still shows fibrosis as sequelae of the COVID-19 infection," pulmonary function testing was back to normal levels. Dr. Gerineni opined that appellant reached MMI as of March 25, 2025. She concluded that no permanent impairment rating was applicable. The Board finds that Dr. Gerineni merely offered a conclusory opinion with regard to permanent impairment and did not explain her reasoning with supporting medical rationale.[10]

The Board notes that proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.[11] 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.[12]

On remand, OWCP shall further develop the medical evidence of record by obtaining an supplemental opinion from Dr. Gerineni regarding the nature and extent of any permanent impairment of a scheduled member or function of the body. OWCP shall then refer the medical record to a DMA for review and a rationalized opinion regarding permanent impairment. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's schedule award claim.

CONCLUSION

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

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[9] *See supra* note 7 at Chapter 2.808.6(e),(f) (March 2017). *See also P.W.,* Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan,* 57 ECAB 349 (2006).

[10] *See M.F.,* Docket No. 25-0013 (issued November 14, 2024); *A.M.,* Docket No. 24-0533 (issued July 5, 2024); *C.G.,* Docket No. 23-0013 (issued April 24, 2023); *C.B.,* Docket No. 20-0629 (issued May 26, 2021); *A.G.,* Docket No. 20-0187 (issued December 31, 2020).

[11] *T.R.,* Docket No. 17-1961 (issued December 20, 2018); *William J. Cantrell,* 34 ECAB 1223 (1983).

[12] *Id.*; *Richard F. Williams,* 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 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 9, 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