

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

<p>B.M., Appellant) and) DEPARTMENT OF THE AIR FORCE,) CHARLESTON AIR FORCE BASE) COMMISSARY, CHARLESTON AIR FORCE) BASE, SC, Employer))</p>	Docket No. 25-0742 Issued: September 4, 2025
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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 29, 2025 appellant filed a timely appeal from a June 12, 2025 merit decision and a July 7, 2025 nonmerit 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

ISSUES

The issues are: (1) whether appellant has established any permanent impairment of her right lower extremity, or greater than eight percent permanent impairment of her right upper

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 7, 2025 decision, OWCP received additional evidence. 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.*

extremity for which she previously received schedule award compensation; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 15, 2011 appellant, then a 46-year-old sales store checker, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her neck, lower back, knees, and upper hip while in the performance of duty. She noted that she was sitting on a stool when it collapsed. OWCP accepted the claim for thoracic or lumbosacral neuritis or radiculitis. It later expanded its acceptance of the claim to include right shoulder rotator cuff syndrome, right elbow medial epicondylitis, sprain of the lateral collateral ligament (LCL) of the right knee, and contusions of the knee and lower leg.

On September 18, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

OWCP referred the case record, along with a statement of accepted facts (SOAF) to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for review.

In a report dated April 10, 2019, Dr. Katz evaluated appellant's permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment* (July/August 2009) (*The Guides Newsletter*). He found no impairment of the right lower extremity due to the right knee, three percent permanent impairment of the right upper extremity using the range of motion (ROM) method for the right shoulder, and no impairment of the lower extremities due to spinal nerve root impairment. Dr. Katz opined that appellant had reached maximum medical improvement (MMI) as of January 29, 2019.

By decision dated May 2, 2019, OWCP granted appellant a schedule award for three percent permanent impairment of the right upper extremity. The award ran from January 29 through April 4, 2019.

On November 21, 2019 appellant filed a Form CA-7 claim for an increased schedule award.

By decision dated January 23, 2020, OWCP denied appellant's increased schedule award claim.

On February 10, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review with respect to the January 23, 2020 decision.

³ A.M.A., *Guides* (6th ed. 2009).

Following a preliminary review, an OWCP hearing representative vacated the January 23, 2020 decision and remanded the case for further development regarding appellant's claim for an increased schedule award.

After conducting further development, OWCP referred the case record, along with an updated SOAF to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as an OWCP DMA, for review.

In a report dated May 28, 2021, Dr. Fellars evaluated appellant's permanent impairment under the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*. He found no impairment of the lower extremities and five percent permanent impairment of the right upper extremity for impingement syndrome in the right shoulder using the diagnosis-based impairment (DBI) rating method.

By decision dated June 22, 2021, OWCP granted appellant a schedule award for an additional two percent permanent impairment of the right upper extremity, for a total of five percent permanent impairment of the right upper extremity. The award ran from April 5 through May 18, 2019.

On June 22, 2023 appellant filed a Form CA-7 claim for an increased schedule award.

On October 19, 2023 OWCP referred appellant, along with the medical record and a SOAF, to Dr. Seth L. Jaffe, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.

In a November 28, 2023 report, Dr. Jaffe reviewed the SOAF and appellant's medical record. He related his physical examination findings, including three measurements for each ROM test in the shoulders. In the right shoulder, Dr. Jaffe observed a positive impingement sign and forward flexion to 105 degrees, abduction to 105 degrees, adduction to 60 degrees, external rotation to 80 degrees, internal rotation to 60 degrees, and extension to 60 degrees. Regarding the right elbow, he noted normal examination findings. Regarding the right knee, Dr. Jaffe observed mild patellofemoral subluxation, crepitus, and tenderness during ROM testing, mild swelling, valgus deformity, and a positive Apley's test laterally. Regarding the spine and lower extremity spinal nerves, he observed normal ROM, sensation, strength, and reflexes. Utilizing Table 15-5, Shoulder Regional Grid: Upper Extremity Impairment, page 402, Dr. Jaffe found one percent permanent impairment of the right upper extremity for right shoulder tendinitis. Utilizing the ROM rating method, he found eight percent permanent impairment of the right upper extremity for the right shoulder. Dr. Jaffe found no ratable impairment of the right lower extremity due to the right knee.

On January 22, 2024 Dr. William Tontz, a Board-certified orthopedic surgeon serving as OWCP's DMA, reviewed Dr. Jaffe's November 28, 2023 report. He applied the DBI rating method to Dr. Jaffe's findings and found that appellant had no impairment of the right lower extremity for the right knee. Regarding the right shoulder, under Table 15-5, Shoulder Regional Grid: Upper Extremity Impairment, page 402, Dr. Tontz found one percent permanent impairment of the right upper extremity for shoulder tendinitis. He also utilized the ROM rating method for the right shoulder and referenced Table 15-34 (Shoulder ROM), page 475, to find permanent

impairment of three percent for flexion of 105 degrees, three percent for abduction of 105 degrees, two percent for internal rotation of 60 degrees, and no impairment for extension or external rotation. Dr. Tontz added these values and applied Table 15-35, page 477, and found a final permanent impairment of eight percent of the right upper extremity (right shoulder).

By decision dated February 22, 2024, OWCP granted appellant a schedule award for an additional three percent permanent impairment of the right upper extremity, for a total of eight percent permanent impairment of the right upper extremity. The award ran for 8.64 weeks from December 15, 2023 through February 13, 2024.

In a medical report dated December 5, 2024, Dr. James Frank Bethea, a Board-certified orthopedic surgeon, noted that appellant related complaints of intense pain from her lower back to her feet, which she attributed to her May 15, 2011 employment injury. He performed a physical examination, which revealed an antalgic gait with use of a cane, reduced ROM of the lumbar spine, and negative straight leg raise, bilaterally. Dr. Bethea reviewed a magnetic resonance imaging (MRI) scan of the lumbar spine from 2019, which revealed multilevel degenerative change with facet arthritis, mild disc bulging, disc desiccation, and mild edema at the posterior elements of L4 and L5. He applied the sixth edition of the A.M.A., *Guides*, and, utilizing Table 17-4, Lumbar Spine Regional Grid, he opined that appellant had a 14 percent whole person impairment.⁴

On December 30, 2024 OWCP advised appellant that Dr. Bethea's December 5, 2024 report was improperly based upon a whole person impairment. In a development letter of even date, it requested that she submit an impairment calculation addressing whether she had reached MMI and provide an impairment rating using the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*. OWCP afforded appellant 30 days to submit the necessary medical evidence.

In a January 30, 2025 medical report, Dr. Bethea noted his review of Dr. Jaffe's examination findings and permanent impairment rating. He indicated that there was "no change" in his opinion as to "her impairment using the sixth edition of the [A.M.A., *Guides*]."

On February 27, 2025 OWCP referred appellant to Dr. Jaffe, along with the medical record and SOAF, for an updated opinion.

In an April 15, 2025 report, Dr. Jaffe reviewed the SOAF and medical record, including Dr. Bethea's December 5, 2024 and January 30, 2025 reports. He documented his physical examination findings, which were unchanged since his prior evaluation on November 28, 2023. Utilizing Table 15-5, Shoulder Regional Grid: Upper Extremity Impairment, page 402, Dr. Jaffe found one percent permanent impairment of the right upper extremity for right shoulder tendinitis. Utilizing the ROM rating method, he found eight percent permanent impairment of the right upper extremity for the right shoulder. Dr. Jaffe found no ratable impairment of the right lower extremity due to the right knee.

OWCP referred the case record, including the April 15, 2025 report of Dr. Jaffe and an updated SOAF to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP DMA, for review.

⁴ *Id.* at 570-574.

In a report dated June 11, 2025, Dr. Hammel reviewed the case record and SOAF. He noted the accepted conditions and applied the sixth edition of the A.M.A., *Guides* to Dr. Jaffe's April 15, 2025 examination findings. Dr. Hammel agreed that appellant had no permanent impairment of the right lower extremity due to the right knee. Utilizing Table 15-5, Shoulder Regional Grid: Upper Extremity Impairment, pages 401 to 405, he found two percent permanent impairment of the right upper extremity for right shoulder sprain. Using the ROM rating method, Dr. Hammel agreed with Dr. Jaffe that appellant had an eight percent right upper extremity impairment for the right shoulder. He referenced Table 2-1 of the A.M.A., *Guides* and concluded that she had eight percent permanent impairment of the right upper extremity given that she had a higher rating for permanent impairment under the ROM rating method than the two percent rating calculated under the DBI rating method.⁵ Dr. Hammel noted that no additional award was due, as the present impairment ratings did not exceed the prior awards. He opined that appellant had reached MMI as of April 15, 2025, the date of Dr. Jaffe's most recent examination.

By decision dated June 12, 2025, OWCP denied appellant's claim for an increased schedule award.

On July 2, 2025 appellant requested reconsideration of OWCP's June 12, 2025 decision. No additional evidence was received.

By decision dated July 7, 2025, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

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. The method used in making such a determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁸ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.⁹

⁵ *Supra* note 3 at 23-28.

⁶ *Supra* note 1.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.*; see also 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).

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.¹⁰ OWCP 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 the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.¹¹

In addressing 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.¹² After a class of diagnosis (CDX) is determined (including identification of a default grade value), the impairment class is then adjusted by grade modifiers based on a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPE), and/or a grade modifier for clinical studies (GMCS).¹³ The net adjustment formula is $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.¹⁴ 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.¹⁵

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology versus the ROM methodology for rating upper extremity impairment.¹⁶ 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).”¹⁷

The FECA Bulletin further advises:

“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

¹⁰ *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹¹ *Supra* note 10 at Chapter 2.808.5 (March 2017).

¹² *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

¹³ A.M.A., *Guides* 383-492; *see M.P.*, Docket No. 13-2087 (issued April 8, 2014).

¹⁴ *Id.* at 405-12. Table 15-4 and Table 15-5 also provide that, if motion loss is present for a claimant with certain diagnosed elbow and shoulder 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 398-05, 475-78.

¹⁵ *Supra* note 6.

¹⁶ FECA Bulletin No. 17-06 (issued May 8, 2017).

¹⁷ *Id.*; *V.L.*, Docket No. 18-0760 (issued November 13, 2018).

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.*”¹⁸ (Emphasis in the original).

Neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.¹⁹ Furthermore, the back is specifically excluded from the definition of organ under FECA.²⁰

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.²¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established any permanent impairment of her right lower extremity, or greater than eight percent permanent impairment of her right upper extremity for which she previously received schedule award compensation.

In medical reports dated December 5, 2024 and January 30, 2025, Dr. Bethea documented his physical examination findings and his review of a lumbar MRI scan. Utilizing Table 17-4, Lumbar Spine Regional Grid, he opined that appellant had a 14 percent whole person impairment. As noted above, neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.²² Accordingly, Dr. Bethea’s reports do not contain an opinion in conformance with the sixth edition of the A.M.A., *Guides* establishing greater than eight percent permanent impairment of the upper right extremity.²³

In accordance with its procedures, OWCP properly referred the evidence of record to its DMA, Dr. Hammel. On June 11, 2025 Dr. Hammel reviewed second opinion physician Dr. Jaffe’s April 15, 2025 report. He concurred that appellant had reached MMI on April 15, 2025, the date of Dr. Jaffe’s impairment evaluation. Dr. Hammel applied the DBI rating method to Dr. Jaffe’s findings and found that appellant had no permanent impairment of the right lower extremity due to the right knee. Under Table 15-5, Shoulder Regional Grid: Upper Extremity Impairment, pages

¹⁸ *Id.*

¹⁹ *G.W.*, Docket No. 23-0600 (issued September 20, 2023); *K.Y.*, Docket No. 18-0730 (issued August 21, 2019); *L.L.*, Docket No. 19-0214 (issued May 23, 2019); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

²⁰ See 5 U.S.C. § 8101(19); see also *T.M.*, Docket No. 23-0211 (issued August 10, 2023); *G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

²¹ *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).

²² *Supra* note 20.

²³ See *J.C.*, Docket No. 21-0426 (issued October 12, 2021).

401 to 405, he found two percent permanent impairment of the right upper extremity for right shoulder sprain. Using the ROM rating method, Dr. Hammel agreed with Dr. Jaffe that appellant had an eight percent right upper extremity impairment due to the right shoulder. He referenced Table 2-1 of the A.M.A., *Guides* and concluded that appellant had eight percent permanent impairment of the right upper extremity given that she had a higher rating for permanent impairment under the ROM rating method than the two percent rating calculated under the DBI rating method.²⁴ Dr. Hammel also properly noted that no additional award was due, as the present impairment ratings did not exceed the prior awards.

The Board finds that OWCP properly accorded the determinative weight to the well rationalized opinion of Dr. Hammel, as he calculated appellant's right upper and lower extremity permanent impairment ratings in accordance with the standards of the sixth edition of the A.M.A., *Guides*.²⁵

As the medical evidence of record is insufficient to establish any permanent impairment of the right lower extremity, or greater than eight percent permanent impairment of her right upper extremity for which she previously received schedule award compensation, the Board finds that appellant has not met her burden of proof.

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

Section 8128(a) of FECA does not entitle a claimant to review an OWCP decision as a matter of right.²⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.²⁷ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.²⁸

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously

²⁴ *Supra* note 3 at 23-28.

²⁵ See K.S., Docket No. 24-0564 (issued June 28, 2024).

²⁶ 5 U.S.C. § 8128(a).

²⁷ 20 C.F.R. § 10.607.

²⁸ *Id.* at § 10.607(a). Formerly decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

considered by OWCP.²⁹ When a timely request for reconsideration does not meet at least one of the above noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.³⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).³¹

Appellant also did not submit any relevant and pertinent new evidence with her July 2, 2025 request for reconsideration. Therefore, she is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).³²

The Board, therefore, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.³³

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish any permanent impairment of her right lower extremity, or greater than eight percent permanent impairment of her right upper extremity for which she previously received schedule award compensation. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

²⁹ *Id.* at § 10.606(b)(3); *see R.M.*, Docket No. 23-0748 (issued October 30, 2023); *L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

³⁰ *Id.* at § 10.608.

³¹ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

³² 20 C.F.R. § 10.606(b)(3).

³³ *See D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the June 12 and July 7, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 4, 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