United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 25-0767**
	)	**Issued: September 8, 2025**
DEPARTMENT OF VETERANS AFFAIRS, DURHAM VA MEDICAL CENTER, Durham, NC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 August 7, 2025 appellant, through counsel, filed a timely appeal from a July 9, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' 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.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

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 27, 2019 appellant, then a 37-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on September 25, 2019 he injured his right middle finger when he struck it on a blunt metal object inside of a food cart while in the performance of duty.[3] OWCP accepted the claim for contusion of the right hand.

On November 13, 2019 Dr. Timothy Ashley, a Board-certified internist, examined appellant due to right hand pain, which he treated as carpal tunnel syndrome related to the acute injury sustained at work on September 25, 2019. In a March 13, 2020 report, Dr. Ashley diagnosed right carpal tunnel syndrome based on an electromyogram (EMG) study and clinical examination. He related that this condition was diagnosed following an injury at work on September 25, 2019. Dr. Ashley reported that carpal tunnel syndrome was frequently a result of repetitive gripping or vibratory movements and was apparently related to appellant's work duties. He opined that the injury on September 25, 2019 triggered his pain episode.

In a letter dated December 1, 2021, appellant, through counsel, requested expansion of his claim to include right carpal tunnel syndrome.

On April 13, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support thereof, appellant submitted a March 23, 2022 permanent impairment evaluation report, by Dr. John W. Ellis, a Board-certified family practitioner, who found that he had reached maximum medical improvement (MMI) and related residual symptoms of difficulty gripping and grasping with his hands bilaterally and pain radiating from the wrist into the elbow. On physical examination Dr. Ellis documented a positive Tinel's sign with palpation over the median nerve at the level of the right wrist. He provided ROM examination of appellant's right wrist and middle finger, listing one ROM effort and provided a *Quick*DASH score of 84 for the right upper extremity and 89 for the left upper extremity. Dr. Ellis applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[4] to his examination findings. Using the diagnosis-based impairment (DBI) rating method, he found one

[3] OWCP assigned the present claim OWCP File No. xxxxxx590. Appellant has a prior claim for a February 20, 2015 traumatic injury under OWCP File No. xxxxxx543, which OWCP accepted for a right small finger injury. He also has a claim for a June 7, 2017 traumatic injury to his left small finger under OWCP File No. xxxxxx463, which OWCP accepted for a laceration and injury of the digital nerve. Under OWCP File No. xxxxxx951, appellant filed an occupational disease claim for right carpal tunnel syndrome which OWCP denied on March 12, 2021. OWCP has administratively combined OWCP File Nos. xxxxxx543, xxxxxx463, xxxxxx951 and xxxxxx590, with the latter serving as the master file.

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

percent right upper extremity impairment due to right wrist contusion, and using the ROM method, he found 18 percent permanent impairment of the right wrist/right upper extremity.

On June 17, 2022 OWCP referred Dr. Ellis' March 23, 2022 report and a statement of accepted facts (SOAF) to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review and an opinion regarding appellant's permanent impairment.

In a June 23, 2022 report, Dr. Katz applied the ROM methodology to Dr. Ellis' examination findings regarding the right wrist and found that under Table 15-32, Wrist Range of Motion, page 473, 16 percent loss of ROM, which with application of the net adjustment formula resulted in 18 percent permanent impairment of the right upper extremity. However, upon review of the diagnostic studies, he questioned whether the apparent loss of wrist motion had an organic basis and noted that the sole accepted diagnosis was contusion which would not be expected to produce this degree of functional loss. Dr. Katz, therefore, recommended a second opinion evaluation.

By decision dated July 29, 2022, OWCP denied appellant's request to expand the acceptance of his claim to include right carpal tunnel syndrome as causally related to his accepted employment injury.

On August 2, 2022 OWCP referred the case record, along with the SOAF, to Dr. James R. Schwartz, 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*.[5]

On August 5, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review with regard to the July 29, 2022 denial of expansion.

In a report dated August 26, 2022, Dr. Schwartz reviewed the SOAF and medical record and noted that appellant related ongoing complaints of right-hand pain and swelling. He performed a physical examination and diagnosed contusion of the right long finger, resolved, and unrelated carpal tunnel syndrome, right wrist. Dr. Schwartz related that the history of injury was of a direct contusion with underlying symptomatic carpal tunnel compression. He determined that the contusion had resolved with no permanent impairment. Dr. Schwartz further found that the carpal tunnel syndrome was unrelated to the September 25, 2019 employment injury, that it required treatment, and the limitation of range of motion was secondary to diffuse swelling of the right hand and likely related to median nerve compression. He concluded that appellant had reached MMI with regard to the accepted employment injury and that he had no permanent impairment due to the right-hand contusion.

On October 5, 2022 OWCP referred Dr. Schwartz' August 26, 2022 report, along with the SOAF and the medical record to Dr. Katz, the DMA, for review and an opinion regarding permanent impairment.

[5] *Id*.

In an October 14, 2022 report, Dr. Katz opined that as Dr. Schwartz was a Board-certified orthopedic surgeon, his findings and conclusions were of greater weight than Dr. Ellis', and that these conclusions were supported by the findings of full motion of the right wrist, elbow, and digits related by Dr. Nwoko on November 7, 2019. He determined that appellant had no permanent impairment of the right upper extremity in accordance with the sixth edition of the A.M.A., *Guides*.

OWCP subsequently received September 25, 2019 right wrist x-rays, which were read as normal.

A hearing was held on December 6, 2022. By decision dated January 19, 2023, OWCP's hearing representative affirmed the July 29, 2022 denial of expansion.

By decision dated January 26, 2023, OWCP denied appellant's schedule award claim.

On February 7, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the January 26, 2023 schedule award decision. A hearing was held on July 18, 2023.

By decision dated October 5, 2023, OWCP's hearing representative found that the SOAF was insufficient as it failed to adequately discuss the December 18, 2020 occupational disease claim for right carpal tunnel syndrome under OWCP File No. xxxxxx951, and that OWCP had incorrectly adjudicated the present claim as a traumatic injury claim rather than as an occupational disease claim. The hearing representative further found that OWCP failed to properly consider Dr. Ellis' opinion that the diagnosed condition of carpal tunnel syndrome was employment related, and that Dr. Schwartz failed to address the accepted condition of right-hand contusion, instead addressing a right middle finger contusion. The hearing representative noted that Dr. Schwartz failed to provide medical reasoning in support of his opinion that appellant's carpal tunnel syndrome was not related to his accepted employment injury of right-hand contusion. The case was remanded for an updated SOAF and a supplemental opinion from Dr. Schwartz addressing the above deficiencies.

On May 17, 2024 OWCP referred the case record, along with an updated SOAF, to Dr. Schwartz, for a second opinion examination and evaluation of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a July 26, 2024 report, Dr. Schwartz reviewed the SOAF and noted the amendments. He performed a physical examination and reported that appellant had subjective numbness to all 10 digits of both hands and zero key pinch bilaterally. Dr. Schwartz, however, found good callosities in his fingertips. He again diagnosed contusion, right ring finger, resolved. Dr. Schwartz determined that appellant's physical examination was not possible physiologically and was "essentially fraudulent." He based this conclusion on appellant's ability to handle his cell phone, but his zero pinch and grip strengths, and his callosities with his stated inability to use either hand. Dr. Schwartz related that appellant had intact ulnar and median musculature, that his examination was nonphysiologic, and diagnosed malingering. He opined that the claim should not be expanded to include carpal tunnel syndrome as there was no history or clinical evidence of this condition although it could be present on electrodiagnostic study. Dr. Schwartz further opined that

appellant had no physiologic impairment to his right upper extremity and that a permanent impairment rating was inappropriate.

By decision dated October 28, 2024, OWCP denied appellant's schedule award claim.

On November 14, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on February 26, 2025.

OWCP subsequently received notes dated August 19 and November 4, 2022 and March 20, 2023 from Dr. Che Monte Torry, an osteopath specializing in physiatry, diagnosing chronic pain syndrome, complex regional pain syndrome of the left upper extremity, cervical disc disease, and lumbar spine pain.

It also received a note by Sandy N. Bacallao, a nurse practitioner, indicating that she had examined appellant on April 20, 2023.

In a February 26, 2025 report, Dr. Antonio Quidgley-Nevares, a physiatrist, diagnosed chronic pain syndrome due to a work-related injury, complex regional pain syndrome of the left upper extremity, right carpal tunnel syndrome, and cervical disc disease. In a series of notes dated August 19, 2022 through September 25, 2024, he included findings of chronic mid and low back pain, left arm weakness, and neck pain.

By decision dated July 9, 2025, OWCP's hearing representative affirmed the October 28, 2024 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] and its implementing regulations[7] 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.[8] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, is used to calculate schedule awards.[9]

[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).

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.[10] 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*."[11] (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 class of diagnosis (CDX) is determined from the appropriate regional grid (including identification of a default grade value), the net adjustment formula is applied using a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPE), and/or a grade modifier for clinical studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] 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.[13]

The A.M.A., *Guides* also provide that the ROM impairment method 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.[14] 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.[15] 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.[16]

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

[11] *Id.*

[12] *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.

[13] *Id.* at 23-28.

[14] *Id.* at 461.

[15] *Id.* at 473.

[16] *Id.* at 474.

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]

In determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.[18]

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.[19]

ANALYSIS

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

OWCP referred appellant to Dr. Schwartz for a second opinion evaluation regarding permanent impairment due to his accepted September 25, 2019 employment injury in accordance with the sixth edition of the A.M.A., *Guides*. In a report dated August 26, 2022, Dr. Schwartz reviewed the SOAF and medical record and noted that appellant related ongoing complaints of right-hand pain and swelling. After performing a physical examination, he concluded that appellant had reached MMI with regard to the accepted employment injury, but had no permanent impairment due to the right-hand contusion. The hearing representative subsequently remanded the case for a supplemental opinion from Dr. Schwartz addressing noted deficiencies. In a July 26, 2024 report, Dr. Schwartz noted his review of the record and examination findings. He did not find permanent impairment of the right upper extremity. Upon receipt of the July 26, 2024 report of Dr. Schwartz, however, OWCP did not route the file to an OWCP medical adviser.

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 percentage of impairment in accordance with the A.M.A., *Guides*, including rationale for the

---

[17] *Id*. at 544.

[18] *C.J.*, Docket No. 21-1389 (issued July 24, 2023); *T.W.*, Docket No. 16-1818 (issued December 28, 2017); *see B.M.*, Docket No. 09-2231 (issued May 14, 2010); *supra* note 9 at Chapter 3.700.3(a)(3) (January 2010); *Dale B. Larson*, 41 ECAB 481 (1990); *Beatrice L. High*, 57 ECAB 329 (2006) (OWCP's procedures provide that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function of the body).

[19] *See supra* note 9 at Chapter 2.808.6(f) (March 2017); *see also 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).

percentage of impairment specified.[20] As Dr. Schwartz' August 26, 2022 report was found deficient by the hearing representative, his July 26, 2024 report should have been routed to a DMA for review.

Accordingly, the case must be remanded for further development. On remand, OWCP shall refer the case record, including the July 26, 2024 report by Dr. Schwartz, and an updated SOAF, to a DMA for an opinion regarding any permanent impairment of a scheduled member or function of the body pursuant to the sixth edition of the A.M.A., *Guides*. After this and other such further proceedings as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 9, 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 8, 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

[20] *Id.*