United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 26-0343**
	)	**Issued: July 1, 2026**
DEPARTMENT OF THE NAVY, U.S. FLEET FORCES COMMAND, NORFOLK NAVAL SHIPYARD, Portsmouth, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On February 27, 2026 appellant filed a timely appeal from September 12, 2025 and January 26, 2026 merit decisions and a February 27, 2026 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] The Clerk of the Appellate Boards docketed the appeal as No. 26-0343.

On February 26, 2021 appellant, then a 34-year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 2021 he sustained left hip, knee, foot, and ankle injuries, including an Achilles tear, when his left foot became stuck between railroad tracks and

[1] Appellant submitted a timely oral argument request before the Board. 20 C.F.R. § 501.5(b). 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). In support of appellant's oral argument request, he asserted that oral argument should be granted because the case involves procedural errors and complex medical causation issues which cannot be adequately addressed through review of the record alone. The Board, in exercising its discretion, denies his request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

he fell while in the performance of duty. OWCP accepted the claim for strain/partial tear of left Achilles tendon, left knee and hip contusions, and left foot and ankle ligament sprains.[2]

In a report dated November 13, 2024, Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon, diagnosed left knee partial meniscal injury and left ankle joint instability. He utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to rate appellant's permanent impairment.[3] Using the diagnosis-based impairment (DBI) rating methodology, Dr. Wardell found under Table 16-3, (Knee Regional Grid) page 509, the class of diagnosis (CDX) for appellant's left knee partial meniscal injury resulted in a Class 1 impairment with two percent permanent impairment. Regarding the left ankle, Dr. Wardell utilized Table 16-2 (Foot and Ankle Regional Grid), page 502 and found a CDX of 1 and one percent permanent impairment of the left lower extremity. He determined that appellant had a total three percent permanent impairment of the left lower extremity. Dr. Wardell concluded that appellant reached maximum medical improvement (MMI) on November 7, 2024.

On November 21, 2024 appellant filed a claim (Form CA-7) for a schedule award.

In a report dated December 23, 2024, Dr. Herbert White, Jr., a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), concurred with Dr. Wardell's two percent permanent impairment rating of the left lower extremity for appellant's knee injury. With respect to the left ankle, he requested Dr. Wardell be contacted to provide range of motion (ROM) measurements for both ankles to determine if modification of the grade modifier for physical examination (GMPE) was indicated. He found a tentative left lower extremity permanent impairment of one percent for the left ankle pending additional ROM findings.

In a report dated March 6, 2025, Dr. Wardell found that appellant reached MMI on March 4, 2025. Using the ROM methodology, he determined that appellant had 7 percent permanent impairment for loss of left ankle dorsiflexion and 10 percent permanent impairment based on left knee flexion, resulting in a total 17 percent left lower extremity permanent impairment.

On March 12, 2025 OWCP referred appellant, the December 10, 2024 SOAF, the medical records, and a series of questions to Dr. James Schwartz, a Board-certified orthopedic surgeon, for a second opinion permanent impairment evaluation. The appointment was scheduled for April 26, 2025 at 8:00 a.m. No report from Dr. Schwartz was submitted to the record.

In an amended report dated August 22, 2025 the DMA, Dr. White, reviewed the medical evidence and found that the ROM methodology to rate appellant's permanent impairment could not be used. The DMA concluded that appellant had three percent left lower extremity permanent impairment for appellant's left knee and ankle conditions using the DBI methodology.

[2] OWCP assigned the present claim OWCP File No. xxxxxx916. Appellant has additional claims before OWCP under OWCP File Nos. xxxxxx128, xxxxxx260, xxxxxx256, xxxxxx169, and xxxxxx385 which OWCP has administratively combined. OWCP File No. xxxxxx385 serves as the master file.

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

By decision dated September 12, 2025, OWCP granted appellant a schedule award for three percent permanent impairment of his left lower extremity, resulting from two percent permanent impairment of the left knee and one percent permanent impairment of the left ankle. The decision noted that the schedule award was based on the findings of Dr. Wardell, and the DMA, Dr. White. The award ran for 8.64 weeks from November 7, 2024 through January 6, 2025.

On September 29, 2025 appellant requested reconsideration asserting that his schedule award should have been based on the ROM methodology as it provided a greater impairment rating.

A December 16, 2025 report from Dr. Wardell provided ROM findings and again found a 17 percent left lower extremity permanent impairment due to appellant's left knee and ankle conditions.

In a January 20, 2026 report, the DMA, Dr. White, reiterated his opinion that appellant had three percent permanent impairment of the left lower extremity.

By decision dated January 26, 2026, OWCP denied modification.

On February 9, 2026 appellant requested reconsideration. No further evidence was received.

By decision dated February 27, 2026, OWCP denied appellant's request for reconsideration.

The Board, having duly considered this matter, finds that the case is not in posture for decision.

OWCP scheduled a second opinion evaluation with Dr. Schwartz for April 26, 2025. However, the record does not contain a report from Dr. Schwartz and OWCP issued its merit decision on September 12, 2025. It should have obtained Dr. Schwartz' second opinion report prior to the issuance of the September 12, 2025 decision. Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.[4]

Accordingly, the Board finds that the September 12, 2025 and January 26, 2026 merit decisions must be set aside. OWCP shall obtain the report from Dr. Schwartz, its second opinion physician. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's schedule award claim. Accordingly

[4] *See Order Remanding Case*, *C.S.*, Docket No. 24-0732 (issued August 24, 2023); *M.B.*, Docket No. 21-0060 (issued March 17, 2022); *D.S.*, Docket No. 19-0292 (issued June 21, 2019), *C.R.*, Docket No. 17-0964 (issued September 9, 2019).

IT IS HEREBY ORDERED THAT the September 12, 2025 and January 26, 2026 decisions of the Office of Workers' Compensation Programs are set aside, and this case is remanded for further proceedings consistent with this order of the Board. The February 27, 2026 decision is set aside as moot.

Issued: July 1, 2026
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board