United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 26-0653**
	)	**Issued: October 14, 2026**
DEPARTMENT OF THE NAVY, MARINE CORPS SUPPORT FACILITY BLOUNT ISLAND, Jacksonville, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 6, 2026 appellant filed a timely appeal from a June 15, 2026 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the June 15, 2026 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than seven percent permanent impairment of the left upper extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

On May 26, 2012 appellant, then a 54-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on April 4, 2012 he injured his left elbow when he struck it on a weapons safe door while in the performance of duty. He did not stop work.

A June 28, 2012 electromyography and nerve conduction velocity (EMG/NCV) study demonstrated moderate-to-severe left-sided cubital tunnel syndrome and mild left carpal tunnel syndrome (CTS). OWCP accepted the claim for lesion of left ulnar nerve and left CTS.

On October 1, 2012 appellant underwent left cubital tunnel release surgery by Dr. Garry S. Kitay, a Board-certified orthopedic and hand surgeon.

On April 4, 2013 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support thereof, appellant submitted a December 18, 2012 permanent impairment evaluation report by Dr. Kitay, who found that he had reached maximum medical improvement (MMI) on that date and had residual numbness in the left ring and small fingers. On physical examination of the upper extremities, he observed bilateral Froment's signs; positive "Scott Earl test," left greater than right; symmetric first dorsal interosseous strength; and good motion of the left elbow. Dr. Kitay diagnosed gradual recovery following left cubital tunnel release and left olecranon spur. He applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[3] to his examination findings and concluded that appellant had four percent permanent impairment of the left upper extremity.

On April 30, 2013 OWCP referred the case to Dr. William G. Pujadas, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), to review the medical record, including the December 18, 2012 impairment rating of Dr. Kitay, and provide an opinion on permanent impairment. In an April 30, 2013 report, Dr. Pujadas determined the appellant had one percent permanent impairment of the left upper extremity under the standards of the sixth edition of the A.M.A., *Guides*.[4]

On May 21, 2013 Dr. Kitay reviewed Dr. Pujadas' April 30, 2013 report. He explained that he applied Table 15-23 (Entrapment/Compression Neuropathy Impairment), page 449, and found a grade modifier for history of 2 for significant intermittent symptoms, a grade modifier for physical findings of 2, and a grade modifier for testing of 1 for confirmed nerve conduction delay. Dr. Kitay indicated that this resulted in a default rating of five percent permanent impairment of

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

[4] *Id*.

the left upper extremity. He then placed appellant at high on the functional scale based upon his return to normal activity and, therefore, his final rating was modified down to four percent permanent impairment of the left upper extremity.

By decision dated August 9, 2013, OWCP granted appellant a schedule award for four percent permanent impairment of the left upper extremity (left arm). The award ran for 12.48 weeks from December 18, 2012 through March 15, 2013.

Appellant subsequently came under the care of Dr. Fady A. El-Bahri, a Board-certified orthopedic surgeon, who recommended occupational therapy and an updated EMG/NCV study.

Occupational therapy reports dated December 27, 2024 through March 10, 2025 noted that appellant related reduced grip strength, episodes of dropping small items, and an inability to lift greater than 15 pounds with the left hand.

On March 10, 2025 appellant filed a Form CA-7 claim for an increased schedule award.

OWCP subsequently received an EMG/NCV study of the left upper extremity dated December 19, 2024, which demonstrated ulnar delay across the elbow at the cubital tunnel and chronic reinnervation changes.

On May 22, 2025 OWCP referred appellant, along with the medical record and a statement of accepted facts (SOAF), to Dr. Arnold G. Smith, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation of permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.

In a report dated June 20, 2025, Dr. Smith reviewed the SOAF and the medical record, and noted appellant's complaints of pain in the left upper extremity, grip weakness, and difficulty typing, which had led him to retire. He provided physical examination findings and diagnosed left chronic cubital tunnel syndrome and left CTS. Utilizing Table 15-23, Dr. Smith found a grade modifier for history of 3 due to constant symptoms, a grade modifier for physical findings of 3 due to grip weakness, and a grade modifier for testing of 1 due to documented nerve conduction delay. He noted that this resulted in a default permanent impairment rating of seven percent of the left upper extremity. Dr. Smith placed appellant at moderate on the functional scale due to difficulty typing that led him to retire, which resulted in no further modification and a final rating of seven percent permanent impairment of the left upper extremity.

In a supplemental report dated August 26, 2025, Dr. Smith related that appellant had a total impairment rating of seven percent of the left upper extremity, which included, and was not in addition to, the prior award of four percent.

On September 5, 2025 Dr. William Tontz, Jr., a Board-certified orthopedic surgeon serving as OWCP's DMA, reviewed the SOAF and medical record, including Dr. Smith's June 20 and August 26, 2025 reports. He applied the sixth edition of the A.M.A., *Guides* to Dr. Smith's examination findings and found a grade modifier for history of 3 due to constant symptoms, a grade modifier for physical findings of 3 due to grip weakness, and a grade modifier for testing of 1 due to documented nerve conduction delay, which resulted in a default permanent impairment rating of seven percent of the left upper extremity. Dr. Tontz concurred with Dr. Smith's final rating of a total of seven percent permanent impairment of the left upper extremity, inclusive of

the prior award of four percent. He opined that appellant had reached MMI on June 20, 2025, the date of Dr. Smith's examination.

By decision dated June 15, 2026, OWCP granted appellant a schedule award for an additional three percent permanent impairment of his left upper extremity (left arm) for a total of seven percent, based on the opinion of Dr. Tontz. The award ran for 9.36 weeks from June 20 through August 24, 2025.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing regulations[6] 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.[7] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, is used to calculate schedule awards.[8]

Impairment due to cubital tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[9] In Table 15-23, grade modifier levels (ranging from zero to four) are described for the categories of test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down based on functional scale, an assessment of impact on daily living activities.[10]

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.[11]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to its DMA for an opinion concerning the nature and percentage of impairment

[5] *Supra* note 1.

[6] 20 C.F.R. § 10.404.

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

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (version 1.2, issued May 4, 2026); *see also*, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (version 1.2, issued May 4, 2026).

[9] A.M.A., *Guides* (6th ed. 2009) 449.

[10] *Id.* at 448-49.

[11] *E.C.,* Docket No. 24-0686 (issued December 19, 2024); *R.P.,* Docket No. 25-0025 (issued December 4, 2024); *T.S.,* Docket No. 16-1406 (issued August 9, 2017); *T.S.,* Docket No. 09-1308 (issued December 22, 2009).

in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[12]

ANALYSIS

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

In his September 5, 2025 report, Dr. Tontz, as OWCP's DMA, reviewed the medical evidence and properly applied the A.M.A., *Guides* to Dr. Smith's physical examination findings. Utilizing Table 15-23, he found a grade modifier for history of 3 due to constant symptoms, a grade modifier for physical findings of 3 due to grip weakness, and a grade modifier for testing of 1 due to documented nerve conduction delay, which resulted in a default permanent impairment rating of seven percent of the left upper extremity. Dr. Tontz concurred with Dr. Smith's final rating of a total of seven percent permanent impairment of the left upper extremity, inclusive of the prior award of four percent. Dr. Tontz' September 5, 2025 report is detailed, well rationalized, and based on a proper factual background, and therefore, his opinion represents the weight of the medical evidence.[13]

As there is no medical evidence of record to establish greater than seven percent permanent impairment of the left upper extremity, for which appellant previously received schedule award compensation, the Board finds that appellant has not met his 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.

CONCLUSION

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

[12] *Supra* note 8 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (version 1.2, issued May 4, 2026).

[13] *See L.C.,* Docket No. 23-0293 (issued June 9, 2025); *A.T.,* Docket No. 25-0272 (issued March 17, 2025); *L.M.,* Docket No. 24-0620 (issued September 9, 2024); *K.M.,* Docket No. 23-1103 (issued February 6, 2024).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2026
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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