United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 26-0509**
	)	**Issued: September 8, 2026**
DEPARTMENT OF THE NAVY, NAVAL WAR COLLEGE, New Port, RI, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 8, 2026 appellant, through counsel, filed a timely appeal from an April 24, 2026 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 greater than five percent permanent impairment of the left upper extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On January 5, 2023 appellant, then a 64-year-old air conditioning equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on December 28, 2022 he injured his left forearm when it was struck by a section of heavy shelving while in the performance of duty. He stopped work on that date. OWCP accepted the claim for contusion of the left forearm. It expanded the acceptance of the claim to include left carpal tunnel syndrome, lesion of the ulnar nerve on the left, and left trigger thumb.

On February 16, 2023 Dr. Gwynne Bragdon, a Board-certified orthopedic surgeon, recounted appellant's history of injury on December 28, 2022 and his symptoms of numbness, tingling, and burning in the left arm. She reviewed the February 2, 2023 electromyogram and nerve conduction velocity (EMG/NCV) testing and diagnosed left carpal tunnel syndrome, trigger thumb of the left hand, and ulnar nerve entrapment at the elbow. Dr. Bragdon recommended surgery. She repeated her findings and diagnoses on March 23 and 24, 2023. On March 28, 2023 Dr. Bragdon performed an OWCP-authorized left elbow ulnar nerve decompression, left carpal tunnel release, and left A1 thumb pulley release. In a June 25, 2023 note, she found that appellant had reached maximum medical improvement (MMI). On July 20, 2023 Dr. Bragdon determined that he could work without restrictions.

On August 10, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In an August 28, 2023 development letter, OWCP requested that appellant submit a permanent impairment evaluation from his attending physician addressing whether he had reached MMI and which provided a permanent impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] It afforded him 30 days to submit the necessary evidence.

On January 8, 2024 OWCP referred appellant, along with the medical record, a December 5, 2023 statement of accepted facts (SOAF), and list of questions, to Dr. John Golberg, a Board-certified orthopedic surgeon, for a second opinion regarding his work-related conditions, and to provide a permanent impairment rating.

In a February 12, 2024 report, Dr. Golberg reviewed the December 5, 2023 SOAF and medical record, and noted examination findings of the left upper extremity. He diagnosed cubital tunnel syndrome of the left elbow, carpal tunnel syndrome of the left wrist, and left side trigger thumb. Dr. Golberg determined that appellant reached MMI. For the left upper extremity, he found that under Table 15-3, page 395 of the A.M.A., *Guides*, appellant had one

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

percent permanent impairment for left wrist pain, under Table 15-21, page 439, that appellant had one percent permanent impairment for peripheral nerve impairment of the median nerve below the forearm nerve neuropathy Table 15-21, page 439, and two percent permanent impairment for ulnar nerve cubital tunnel symptoms, mild sensory deficit as well as hypersensitivity neuropathy, Table 15-21, page 443. Dr. Golberg then determined the grade modifiers utilizing pages 406 and 408 of the A.M.A., *Guides* to reach functional history of two due to pain with normal activities requiring medication and protective apparatus, grade modifier physical examination of two due to moderate palpatory findings adjacent to the surgical scar and persistent neuralgic pain, and grade modifier clinical studies of two as the June 22, 2023 magnetic resonance imaging scan revealed normal first dorsal extensor compartment. He utilized the net adjustment formula, which resulted in -1 or grade B impairment. Dr. Golberg then utilized the example rating found in Table 15-10, *Methodology for Determining the Grade in an Impairment Class*, page 412 of the A.M.A., *Guides* to reach 18 percent permanent impairment of the left upper extremity.

In a March 20, 2024 report, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA) reviewed the medical evidence, including Dr. Golberg's permanent impairment rating. He opined that appellant reached MMI on February 12, 2024, the date of Dr. Golberg's evaluation. As the February 3, 2023 EMG/NCV demonstrated left cubital tunnel syndrome and clinical notes documented ongoing left elbow pain and tenderness, he utilized the diagnosis-based impairment (DBI) methodology under Table 15-23 for compression neuropathy to calculate test grade 1, history grade 2, and physical findings grade 2, averaging to 2 resulting in five percent permanent impairment rating of appellant's left upper extremity. Dr. Hammel related that range of motion (ROM) methodology was not appropriate for compression neuropathies.

In a July 18, 2024 supplemental report, Dr. Golberg related that he had included Class 1 impairment ratings for all the accepted conditions, that appellant had reached MMI, and that the ROM methodology was not appropriate.

By decision dated August 7, 2024, OWCP granted appellant a schedule award for a permanent impairment of the left upper extremity. The date of MMI was February 12, 2024. The award covered a period of 15.6 weeks and ran from February 12 through May 31, 2024.

On August 15, 2024 appellant, through counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated September 23, 2024, an OWCP hearing representative set aside the August 7, 2024 decision and remanded the case for further development. She determined that Dr. Golberg had not explained his impairment rating and that OWCP should request that he provide a supplemental report. No further development was undertaken.

By decision dated November 6, 2024, OWCP granted appellant a schedule award for five percent permanent impairment of the left upper extremity. The date of MMI was February 12, 2024. The award covered a period of 15.6 weeks and ran from February 12 through May 31, 2024.

Appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated January 15, 2025, an OWCP hearing representative set aside the November 6, 2024 decision and remanded the case for further development. She directed OWCP to comply with the development described in the September 23, 2024 hearing representative's decision.

On February 14, 2024 Dr. Golberg related that he applied Table 15-23, page 449 of the A.M.A., *Guides* to determine the grade modifiers for compression neuropathy, including left upper extremity cubital tunnel syndrome, and left upper extremity carpal tunnel syndrome with compression of the median and ulnar nerves. He reviewed the February 3, 2023 EMG/NCV studies and found that these findings supported a grade modifier 1 for test findings. Dr. Golberg further determined that appellant continued to experience mild intermittent symptoms and that therefore a grade modifier 1 would apply for the compression neuropathy of the wrist and for the elbow. He assigned one percent permanent impairment with regard to carpal tunnel entrapment and two percent permanent impairment because of hypersensitivity of the elbow. Dr. Golberg found a total impairment of a minimum of three percent. He did not provide an impairment rating for the thumb as appellant had recovered with no continuing permanent functional loss. Dr. Golberg related, "I then modified my conclusions based on the adjustment formula and came to a final conclusion of the permanent partial impairment of the left upper extremity of a total of 18 percent."

In a March 3, 2025 report, Dr. Hammel, serving as the DMA, reviewed the medical evidence, including Dr. Golberg's permanent impairment rating. He repeated his finding of five percent permanent impairment of the left upper extremity due to compression neuropathy. He provided test findings of grade 1, history grade 2, physical findings grade 2 for decreased sensation. Dr. Hammel determined the average value for the three modifiers to reach 1.6 which rounds to 2, so grade 2 is the final rating category with a corresponding impairment rating of 5.

On April 30, 2025 OWCP declared a conflict in medical opinion between Dr. Hammel and Dr. Golberg regarding appellant's permanent impairment. It referred appellant, along with the medical record, the SOAF, and a series of questions to Dr. Hilel Skoff, a Board-certified orthopedic surgeon selected as the impartial medical examiner (IME), to resolve the conflict of medical evidence.

In a June 10, 2025 report, Dr. Skoff related appellant's physical examination findings, including a positive Tinel's sign over the ulnar nerve on the medial aspect of the left elbow. He related that impairment under the A.M.A., *Guides* "would take into consideration residual evidence of cubital tunnel syndrome as well as medial and lateral epicondylitis. I would rate his permanent/partial impairment on that basis to be [five percent] upper extremity."

By decision dated July 16, 2025, OWCP denied appellant's claim for an increased schedule award.

On July 28, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 20, 2026.

By decision dated April 24, 2026, OWCP's hearing representative affirmed the July 16, 2025 decision finding that there was no conflict between Drs. Golberg and Hammel.

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 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.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, is used to calculate schedule awards.[7]

Impairment due to cubital tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[8] In Table 15-23, grade modifiers 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.[9]

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*

[4] *Supra* note 1.

[5] 20 C.F.R. § 10.404.

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

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (version 1.1, issued April 24, 2026); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (version 1.1, issued April 24, 2026).

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

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

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

calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used."[11] (Emphasis in the original).

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 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 this case is not in posture for decision.

On April 30, 2025 OWCP declared a conflict in medical opinion between Drs. Hammel and Golberg, both OWCP physicians, regarding appellant's permanent impairment. However, under FECA, a conflict in the medical opinion evidence may only be declared between an OWCP-designated physician and the employee's physician. There is no provision for finding a conflict in the medical opinion evidence between two OWCP-designated physicians.[13] OWCP then referred appellant to Dr. Skoff to resolve the alleged conflict. Dr. Skoff's June 10, 2025 report provided detailed physical examination findings of appellant's left upper extremity and provided permanent impairment assessments under the DBI methodologies, pursuant to the A.M.A., *Guides*. He opined that appellant demonstrated residual evidence of cubital tunnel syndrome as well as medial and lateral epicondylitis of the left upper extremity. As no true conflict existed in the medical evidence at the time of the referral to Dr. Skoff, the Board finds that Dr. Skoff's report may not be afforded the special weight of an IME and should be considered for its own intrinsic value.[14]

OWCP, however, did not refer Dr. Skoff's report to a DMA. OWCP's procedures provide that, if a physician provides a permanent impairment report, the case should be referred to the DMA for review.[15] The Board finds that OWCP failed to properly develop appellant's schedule award claim.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.[16] While the claimant has the burden of proof to establish

[11] *Id*.

[12] *Supra* note 8 at Chapter 2.808.5a (version 1.1, issued April 24, 2026).

[13] 5 U.S.C. § 8123(a); *J.B.,* Docket No. 17-1610 (issued February 22, 2018); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[14] *B.W.,* Docket No. 25-0511 (issued July 20, 2026); *N.T.*, Docket No. 21-0236 (issued January 24, 2023); *C.H.*, Docket No. 19-1639 (issued April 3, 2020); *Peter C. Belkind*, 56 ECAB 580 (2005); *Marie J. Born*, 27 ECAB 623 (1976).

[15] *See supra* note 8 at Chapter 2.808.6d and e (April 24, 2026); *R.T.,* Docket No. 26-0234 (issued May 14, 2026); *H.H.*, Docket No. 21-0055 (issued September 9, 2021).

[16] *R.T.*, *id*.; *T.O.*, Docket No. 18-0659 (issued August 8, 2019).

entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.[17]

The case shall therefore be remanded for further development. On remand, OWCP shall refer the medical record to a new DMA to determine the extent of appellant's employment-related left upper extremity permanent impairment based on the A.M.A., *Guides* and the date he reached MMI. Following this and other such further development as deemed necessary, it 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 April 24, 2026 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, 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

[17] *R.T., T.O.*, *id*.; *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *Jimmy A. Hammons*, 51 ECAB 219 (1999).