

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

_____)
A.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Auburn, AL, Employer)
_____)

Docket No. 22-0118
Issued: December 15, 2022

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2021 appellant filed a timely appeal from July 30 and August 27, 2021 merit decisions and an October 18, 2021 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$635.47 for the period May 18 through 22, 2021 because she continued to receive wage-loss compensation after she returned to work; (2) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; (3) whether appellant has met her burden of proof to establish greater than five percent permanent impairment of the right upper extremity, for which she received schedule

¹ 5 U.S.C. § 8101 *et seq.*

award compensation; and (4) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On May 21, 2018 appellant, then a 45-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 19, 2018 she heard a popping noise in her right wrist when she grabbed a book from the back of her privately-owned vehicle while in the performance of duty.² She stopped work on the date of injury. OWCP assigned that claim OWCP File No. xxxxxx048.

On July 13, 2018 OWCP accepted the claim for strain of muscle, fascia and tendon of the right forearm level. It advised appellant that:

“If you receive a compensation check which includes payment for a period you have worked, return it to us immediately to prevent an overpayment of compensation. Checks may be returned to the following address: US Department of Treasury, 13000 Townsend Road, Philadelphia, PA 19154.

“If you receive compensation *via* Electronic Funds Transfer (EFT), a notification of the date and amount of payment will appear on the statement from your financial institution. You are expected to monitor your EFT deposits carefully, at least every two weeks. If you have worked for any portion of the period for which a deposit was made, advise OWCP immediately so that the overpayment can be collected.”

Thereafter, OWCP paid appellant wage-loss compensation on the supplemental rolls as of July 5, 2018. On December 11, 2018 appellant returned to full-time modified-duty work with restrictions. She stopped work on February 19, 2019 and OWCP again paid her wage-loss compensation on the supplemental rolls commencing that date *via* EFT. Appellant returned to full-time modified-duty work with restrictions on February 1, 2020 but stopped work again on that date.

On June 8, 2020 OWCP expanded the acceptance of appellant's claim to include right upper limb carpal tunnel syndrome (CTS), right shoulder impingement, and right shoulder rotator cuff tear. Appellant underwent OWCP-authorized right shoulder arthroscopic surgery on September 16, 2020. OWCP paid her wage-loss compensation on the supplemental rolls for the period commencing June 20, 2020 and on the periodic rolls commencing October 11, 2020.

Appellant returned to full-time modified-duty work with restrictions on May 18, 2021. On May 22, 2021 OWCP paid her compensation for the period May 18 through 22, 2021 in a direct deposit payment of \$635.47.

In a preliminary overpayment determination dated May 24, 2021, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$635.47 for the

² Appellant has a prior claim under OWCP File No. xxxxxx185, which OWCP accepted for a November 15, 2017 right wrist contusion and right upper limb carpal tunnel syndrome. OWCP has not administratively combined this claim with the instant claim under OWCP File No. xxxxxx048.

period May 18 through 22, 2021 because she received compensation for total disability after she returned to full-time work on May 18, 2021. It further advised her of its preliminary determination that she was at fault in the creation of the overpayment because she had accepted payment that she knew or reasonably should have known to be incorrect. OWCP requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified her that within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a preresoupment hearing. Appellant did not respond.

On June 15, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

OWCP, by development letter dated June 21, 2021, informed appellant that no medical evidence had been submitted with her claim and informed her of the type of evidence required to establish her schedule award claim. It afforded her 30 days to provide the requested evidence.

In response, appellant submitted a June 30, 2021 medical report from Dr. Saadiq F. El-Amin, a Board-certified orthopedic surgeon, who summarized her history of injury, including her accepted conditions under the instant claim, OWCP File No. xxxxxx048, and claim under OWCP File No. xxxxxx185, and treatment. Dr. El-Amin noted that appellant's wrist/hand injury was imaged and based on the results no further medical treatment would improve her condition. A wrist brace was provided to help with work activities. Dr. El-Amin determined that appellant reached maximum medical improvement (MMI) as of her most recent evaluation by him on May 25, 2021. He indicated that she was status post right shoulder arthroscopic rotator cuff repair with augmentation patch, subacromial decompression, and acromioplasty performed on September 16, 2020. Dr. El-Amin further indicated that appellant continued to have some weakness and limited range of motion (ROM) which may never return to preinjury status. He diagnosed wrist capsular strain and arthritis. Dr. El-Amin noted that appellant had no preexisting injuries. He noted appellant's accepted condition of CTS right upper limb and strain of muscle/tendon/fascia at forearm level right arm under OWCP File No. xxxxxx185, and her accepted conditions of complete rotator cuff tear or rupture, not specified as traumatic, impingement syndrome of right shoulder, and strain of muscle fascia/tendon of other parts of biceps of the right arm, under the current claim. Dr. El-Amin noted that a functional capacity evaluation (FCE) showed limitations in both shoulder and wrist ROM and strength. He reported ROM measurements that included 138 degrees of flexion, 50 degrees of extension, 142 degrees of abduction, 50 degrees of adduction, 70 degrees of internal rotation, and 66 degrees of external rotation. Utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ Dr. El-Amin found that appellant had 10 percent permanent impairment of the right upper extremity.

On July 10, 2021 Dr. Morley Slutsky, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed a statement of accepted facts (SOAF) and the medical record, including Dr. El-Amin's June 30, 2021 findings. Dr. Slutsky found that appellant had five percent permanent impairment based on a right shoulder full-thickness rotator cuff tear

³ A.M.A., *Guides* (5th ed. 2001).

with residual dysfunction using the diagnosis-based impairment (DBI) method in accordance with the sixth edition of the A.M.A., *Guides*.⁴ He determined that, under Table 15-5, pages 401-05, the class of diagnosis (CDX) for appellant's right shoulder full-thickness rotator cuff tear resulted in a class 1 impairment. The DMA assigned a grade modifier for functional history (GMFH) of 1 under Table 15-7, page 406, as appellant was still symptomatic and there was no evidence that she had to perform functional modifications to achieve self-care activities. He assigned a grade modifier for physical examination (GMPE) of 0 under Table 15-8, page 408 as weakness was not used to assign a GMPE and there was no tenderness to palpation. The DMA assigned a grade modifier for clinical studies (GMCS) of 2 under Table 15-9, page 410 based on the results of a January 28, 2020 magnetic resonance imaging (MRI) scan. He applied the net adjustment formula $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (0 - 1) + (2 - 1) = 0$, which resulted in a grade C, five percent permanent impairment of the right upper extremity. The DMA indicated that Dr. El-Amin provided invalid upper extremity ROM measurements. He advised that Dr. El-Amin documented only one motion per joint movement, which was not consistent with the validity criteria in section 15.7, page 464 of the A.M.A., *Guides* for measuring ROM. As such, the ROM measurements were not valid for impairment calculations. The DMA determined that the date of MMI was May 25, 2021, the date of Dr. El-Amin's impairment evaluation.

On July 29, 2021 OWCP requested that Dr. Slutsky clarify his July 10, 2021 report as to whether the accepted condition of CTS was included in his impairment rating.

By decision dated July 30, 2021, OWCP finalized the May 24, 2021 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$635.47 for the period May 18 through 22, 2021, for which she was at fault, because she continued to receive FECA compensation after her return to full-time work on May 18, 2021. It noted that she should have reasonably known that she had received an incorrect payment. OWCP directed recovery of the overpayment in full.

In response to OWCP's July 29, 2021 question, Dr. Slutsky submitted an August 13, 2021 report, noting that there was no permanent impairment related to appellant's CTS as Dr. El-Amin did not rate impairment due to this condition. He further noted that the first evaluation that mentioned CTS was performed on August 21, 2018 and the record did not indicate that an electromyogram/nerve conduction velocity (EMG/NCV) study was performed to properly diagnose the condition. The DMA also noted that Dr. Tai Q. Chung, a Board-certified orthopedic surgeon and OWCP-second opinion physician, conducted an examination on January 15, 2020, but he did not diagnose CTS. He related that according to pages 445 and 446 of the A.M.A., *Guides*, if nerve conduction testing has not been performed, which appeared to be the case in the instant claim, then there was no ratable impairment using the compression neuropathy section and Table 15-23, page 449. Additionally, the DMA related that the A.M.A., *Guides* provides that if symptoms/signs persisted, then these conditions may still be ratable as non-specific wrist pain using section 15.2 and the DBI grid at Table 15-3, page 395. He noted that Dr. El-Amin's evaluation revealed that appellant had right shoulder symptoms, but no symptoms related to CTS. The DMA also noted that Dr. El-Amin reported normal upper extremity sensation and muscle strength. Valid wrist ROM measurements were not provided. As such, the DMA concluded that

⁴ A.M.A., *Guides* (6th ed. 2009).

since there was no clinical evidence of residuals related to CTS, there was no impairment related to the condition using the DBI or ROM method. He reiterated his calculations and five percent right upper extremity impairment rating first presented in his July 10, 2021 report.

OWCP, in an August 27, 2021 decision, granted appellant a schedule award for five percent permanent impairment of the right arm. The period of the award ran for 15.6 weeks from July 17 through November 3, 2021 and was based on the opinion of the DMA.

On September 27, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the August 27, 2021 schedule award decision.

By decision dated October 18, 2021, OWCP denied appellant's request for an oral hearing as untimely filed, finding that her request was not made within 30 days of the August 27, 2021 OWCP decision as it was postmarked on September 28, 2021. It further exercised discretion and determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence to establish that she had a greater percentage of permanent impairment than awarded.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁵ Section 8129(a) of FECA provides, in pertinent part, that when an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.⁶

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁷ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁸

⁵ *Id.* at § 8102(a).

⁶ *Id.* at § 8129(a).

⁷ *Id.* at § 8116(a).

⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4g (September 2020); *see also L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$635.47 for the period May 18 through 22, 2021 because she continued to receive wage-loss compensation after she returned to work.

Appellant resumed full-time modified-duty employment on May 18, 2021. OWCP, however, continued to pay her wage-loss compensation for total disability following her return to work through May 22, 2021, which resulted in an overpayment of compensation. Appellant was not entitled to receive total disability benefits and actual earnings for the same time period.⁹

OWCP calculated appellant's net compensation paid for the period May 18 through 22, 2021 as \$635.47. The Board finds that she received an overpayment of compensation in the amount of \$635.47 for the period May 18 through 22, 2021.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) provides that adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰ A claimant who is at fault in the creation of the overpayment is not entitled to waiver.¹¹ On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual will be found at fault if he or she has done any of the following: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known was incorrect.

The Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault the first time incorrect funds are deposited into his or her account, as the acceptance of the resulting overpayment lacks the requisite knowledge.¹² The Board has also held in cases involving a series of incorrect payments, where the requisite knowledge is established by a letter or telephone call from OWCP, or simply with the passage of time and a greater opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.¹³ Previous cases have held that receiving one erroneous direct

⁹ *See supra* notes 7 to 8.

¹⁰ 5 U.S.C. § 8129(b).

¹¹ *See B.R.*, Docket No. 18-0339 (issued January 24, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *Gregg B. Manston*, 45 ECAB 344, 354 (1994); *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

¹² *A.B.*, Docket No. 18-0922 (issued January 3, 2019); *Tammy Craven*, 57 ECAB 689 (2006).

¹³ *S.D.*, Docket No. 17-0309 (issued August 7, 2018).

deposit payment does not necessarily create the requisite knowledge to find that a claimant was at fault in the creation of the overpayment.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant was without fault in the creation of the overpayment.

In cases where a claimant receives compensation through direct deposit, the Board has held that OWCP must establish that, at the time a claimant received the direct deposit in question, he or she should have known that the payment was incorrect.¹⁵ As noted above, the Board has held that an employee who receives payments from OWCP in the form of a direct deposit might not be at fault for the first incorrect deposit into his or her account since the acceptance of the overpayment, at the time of receipt of the direct deposit, lacks the requisite knowledge.¹⁶ Because fault is defined by what the claimant knew or should have known at the time of acceptance, one of the consequences of EFTs is that the claimant lacks the requisite knowledge at the time of the first incorrect payment.¹⁷ Whether or not OWCP determines that an individual is at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. It is not appropriate, however, to make a finding that a claimant has accepted an overpayment *via* direct deposit until such time as a reasonable person would have been aware that this overpayment had occurred. This awareness could be established either through documentation such as a bank statement or notification from OWCP or where a reasonable period of time has passed during which a claimant could have reviewed independent confirmation of the incorrect payment.¹⁸

Appellant returned to work on May 18, 2021. OWCP paid her compensation for the period May 18 through 22, 2021 in a direct deposit payment on May 22, 2021. The evidence of record does not establish that, on the date of the first direct deposit of compensation, appellant knew or should have known that she was accepting a direct deposit to which she was not entitled.¹⁹ The record does not contain any documentation or other evidence to demonstrate that appellant had knowledge at the time of the May 22, 2021 direct deposit covering the period May 18 through 22, 2021, that the payment was incorrect, or that a reasonable period of time passed during which she could have reviewed bank statements or been informed of the incorrect payment. The Board thus finds that she was without fault in accepting the initial direct deposit covering the period May 18

¹⁴ *D.B.*, Docket No. 15-0258 (issued February 1, 2016); *W.P.*, 59 ECAB 514 (2008).

¹⁵ *See S.S.*, Docket No. 20-0776 (issued March 15, 2021); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *see also Claude T. Green*, 42 ECAB 174, 278 (1990).

¹⁶ *S.S.*, *id.*; *C.H.*, *id.*; *see Tammy Craven*, 57 ECAB 589 (2006); *see also George A. Hirsch*, 47 ECAB 520 (1996).

¹⁷ *Id.*

¹⁸ *See C.W.*, Docket No. 19-1653 (issued March 23, 2021); *K.K.*, Docket No. 19-0978 (issued October 21, 2019); *K.H.*, Docket No. 06-0191 (issued October 30, 2006).

¹⁹ *See B.W.*, Docket No. 19-0239 (issued September 18, 2020); *K.E.*, Docket No. 19-0978 (issued October 25, 2018).

through 22, 2021. The case must therefore be remanded for OWCP to determine whether appellant is entitled to waiver of the recovery of the overpayment for the period May 18 through 22, 2021.²⁰

LEGAL PRECEDENT -- ISSUE 3

The schedule award provisions of FECA²¹ and its implementing regulations²² 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 shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.²³ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).²⁴ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.²⁵

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 shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the CDX is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). 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.²⁶

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.²⁷ If ROM is used as a stand-alone approach, the total of

²⁰ *S.S.*, *supra* note 15; *M.P.*, Docket No. 20-1035 (issued December 1, 2020).

²¹ 5 U.S.C. § 8107.

²² 20 C.F.R. § 10.404.

²³ *Id.* See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

²⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (March 2017).

²⁵ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

²⁶ *Id.* at 23-28.

²⁷ A.M.A., *Guides* 461.

motion impairment for all units of function must be calculated. All values for the joint are measured and added.²⁸ 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.²⁹

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).

“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.*”³⁰ (Emphasis in the original.)

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with OWCP’s DMA providing rationale for the percentage of impairment specified.³¹

ANALYSIS -- ISSUE 3

The Board finds that the case is not in posture for decision regarding the extent of appellant’s right upper extremity permanent impairment.

In support of her schedule award claim, appellant submitted Dr. El-Amin’s June 30, 2021 report in which he opined that, under the fifth edition of the A.M.A., *Guides*, appellant had a 10 percent ROM impairment rating for the right upper extremity due to her right wrist capsular strain

²⁸ *Id.* at 473.

²⁹ *Id.* at 474.

³⁰ FECA Bulletin No. 17-06 (issued May 8, 2017); A.G., Docket No. 18-0329 (issued July 26, 2018).

³¹ *See supra* note 24 at Chapter 2.808.6e (March 2017).

and arthritis. However, his opinion is of diminished probative value as he did not use the sixth edition of the A.M.A., *Guides*.³²

In a July 10, 2021 report, Dr. Slutsky, the DMA, reviewed the SOAF and medical record, including Dr. El-Amin's June 30, 2021 findings. Utilizing the DBI method of the A.M.A., *Guides*, he identified the CDX as a class one impairment for the diagnosis of right shoulder full-thickness rotator cuff tear under Table 15-5, pages 401-05. The DMA calculated that appellant had five percent permanent impairment of the right upper extremity. He disagreed with Dr. El-Amin's 10 percent ROM right upper extremity impairment rating as he provided invalid upper extremity ROM measurements. The DMA explained that Dr. El-Amin's ROM measurements were not valid for impairment calculations as he documented only one motion per joint movement, which was not consistent with the validity criteria in section 15.7, page 464 of the A.M.A., *Guides* for measuring ROM.

The Board finds that OWCP did not follow the procedures outlined in FECA Bulletin No. 17-06. As noted above, FECA Bulletin No. 17-06 provides detailed instructions for obtaining sufficient evidence to conduct a complete impairment evaluation.³³ It indicates that, if the rating physician provides an assessment using the ROM method, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating. FECA Bulletin No. 17-06 further provides that the evaluator should obtain three independent measurements for range of motion and that the greatest measurement should be used to determine the extent of impairment.³⁴ FECA Bulletin No. 17-06 indicates that OWCP should instruct the physician to obtain three independent measurements.³⁵

As OWCP did not inform Dr. El-Amin of the provisions of FECA Bulletin No. 17-06 and attempt to obtain a supplemental report containing three independent measurements of range of motion in accordance with the procedures set forth in the A.M.A., *Guides* and FECA Bulletin No. 17-06, the Board will remand the case for OWCP to obtain the evidence necessary to complete the rating as described above.³⁶

Further, in an August 13, 2021 supplemental report, the DMA explained that he did not rate appellant's permanent impairment due to the accepted condition of right CTS because this diagnosis was not supported by the medical evidence of record. He reiterated his opinion that appellant had five percent right upper extremity permanent impairment. When the DMA, second

³² See *B.T.*, Docket No. 19-1586 (issued May 4, 2020); *L.L.*, Docket No. 19-0855 (issued September 24, 2019); *S.J.*, Docket No. 16-1162 (issued February 8, 2017) (a medical opinion not based on the appropriate edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of permanent impairment).

³³ FECA Bulletin No. 17-06 (issued May 8, 2017).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See *J.V.*, Docket No. 18-1052 (issued November 8, 2018); *M.C.*, Docket No. 18-0526 (issued September 11, 2018).

opinion specialist or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.³⁷ As the DMA's opinion is outside the framework of the SOAF, the Board finds that it is of diminished probative value.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.³⁸ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.³⁹ Accordingly, the Board finds that the case must be remanded to OWCP.⁴⁰

On remand OWCP shall combine the current OWCP record with OWCP File No. xxxxxx185. It shall thereafter clarify the accepted conditions and prepare an updated SOAF. OWCP shall then refer the case record, together with the SOAF, back to the DMA, Dr. Slutsky, for a reasoned opinion regarding the extent of appellant's permanent impairment of the right upper extremity. Following this and any such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁴¹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$635.47 for the period May 18 through 22, 2021 because she continued to receive wage-loss compensation after she returned to work. The Board, however, finds that appellant was without fault in the creation of the overpayment. Additionally, the Board finds that the case is not in posture for decision regarding the extent of appellant's right upper extremity permanent impairment.

³⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *C.D.*, Docket No. 08-1266 (issued January 28, 2009); *Willa M. Frazier*, 55 ECAB 379 (2004).

³⁸ *See L.F.*, Docket No. 20-0549 (issued January 27, 2021).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ In light of the Board's disposition of Issue 3, Issue 4 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2021 overpayment decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the August 27, 2021 schedule award decision and October 18, 2021 oral hearing decision of OWCP are set aside, the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 15, 2022
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