

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

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**F.A., Appellant** )

**and** )

**U.S. POSTAL SERVICE, MAIL RECOVERY** )  
**CENTER, Atlanta, GA, Employer** )  
\_\_\_\_\_ )

**Docket No. 22-0167**  
**Issued: December 16, 2022**

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 8, 2021 appellant filed a timely appeal from August 17 and September 2, 2021 merit decisions of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> The Board notes that, during the pendency of this appeal, OWCP issued a November 19, 2021, decision which denied modification of its August 17, 2021 decision. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). Consequently, OWCP's November 19, 2021 decision is set aside as null and void. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the September 2, 2021 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.*

## ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work for the period June 14 through 18, 2021 causally related to her accepted November 19, 2015 employment injury; and (2) whether appellant has met her burden of proof to establish greater than six percent permanent impairment of her right upper extremity for which she previously received a schedule award.

## FACTUAL HISTORY

This case has previously been before the Board on another issue.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On December 8, 2015 appellant, then a 60-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained neck, right shoulder, wrist, and arm conditions due to repetitively throwing parcels and packages, reaching above the shoulder, pushing, twisting, pulling, bending, and prolonged standing, while in the performance of duty. She did not stop work. OWCP accepted the claim for C3-4 and C6-7 cervical disc displacement and right shoulder bursitis.

On January 19, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award. She submitted a November 30, 2018 report from Dr. Ralph D'Auria, a Board-certified physiatrist. After he noted appellant's physical examination findings, Dr. D'Auria referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>5</sup> and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) and found that appellant had 49 percent right upper extremity permanent impairment based on cervical and thoracic motor and sensory deficits. He reported that, according to Table 15-34, Shoulder Range of Motion, page 475, of the A.M.A., *Guides*, appellant had nine percent permanent impairment of the right extremity. Dr. D'Auria concluded that appellant had a total of 58 percent permanent impairment of the right upper extremity.

On March 14, 2019 OWCP forwarded a statement of accepted facts (SOAF) and the medical record, including Dr. D'Auria's November 30, 2018 impairment rating, to a district medical adviser (DMA) for an impairment rating. In a report dated March 20, 2019, Dr. Kevin Kuhn, a Board-certified orthopedic surgeon, serving as OWCP's DMA reviewed appellant's medical record and opined that appellant had reached maximum medical improvement (MMI) as of Dr. D'Auria's report. He indicated that Dr. D'Auria's rating based on loss of range of motion (ROM) was invalid as Dr. D'Auria failed to provide three independent ROM measurements. Dr. Kuhn used the diagnosis-based method (DBI) to determine appellant's permanent impairment. Applying Table 17-2 (Cervical Spine Regional Grid) of the A.M.A., *Guides*, he assigned a Class 1 impairment to the class of diagnosis (CDX) of intervertebral disc degeneration without

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<sup>4</sup> Docket No. 19-0321 (issued July 5, 2019).

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

radiculopathy.<sup>6</sup> Dr. Kuhn assigned a grade modifier for functional history (GMFH) of 2 for pain and symptoms with normal activity;<sup>7</sup> a grade modifier for physical examination (GMPE) of 0;<sup>8</sup> and a grade modifier for clinical studies (GMCS) of 0.<sup>9</sup> Using the net adjustment formula, he calculated a net adjustment of -1, which resulted in a Class 1, Grade B impairment, which equaled one percent permanent impairment of the right upper extremity. With respect to the right shoulder, Dr. Kuhn utilized Table 15-5 and found that appellant's diagnosis of impingement, which he found was the closest diagnosis to a CDX of right shoulder bursitis, resulted in a Class 1 impairment with a default impairment of one percent.<sup>10</sup> He assigned: a GMFH of 2 for pain with normal activity;<sup>11</sup> a GMPE of 1<sup>12</sup> for mild palpatory findings; and a GMCS of 2 for clinical studies confirming diagnosis with moderate pathology.<sup>13</sup> Using the net adjustment formula, Dr. Kuhn calculated a net adjustment of 2, which resulted in a Class 1, Grade E, which equaled two percent permanent impairment of the right upper extremity. He then combined the impairment ratings to find a total of three percent right upper extremity permanent impairment.

On May 7, 2019 OWCP referred appellant, the medical record, a SOAF, and series of questions to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the rating of appellant's permanent impairment.

In a May 23, 2019 report, Dr. Doman provided appellant's physical examination findings and noted that she had no complaints of radicular symptoms and no upper or lower extremity complaints of numbness or paresthesias. Using the sixth edition of the A.M.A., *Guides*, Table 15-5, page 402, he assigned a CDX of shoulder impingement syndrome, which he explained was the closest diagnosis to the accepted bursitis condition, resulting in a Class 1 impairment. Dr. Doman assigned a GMPE of 2, a GMFH of 2, and a GMCS of 1, which resulted in a net adjustment of 2 from the default value, and equaled a Class 1, Grade E impairment rating of two percent. He also provided appellant's ROM findings, noting that forward flexion was 102 degrees, extension was 50 degrees, abduction was 100 degrees, adduction was 40 degrees, internal rotation was 80 degrees, and external rotation was 70 degrees. Dr. Doman found that appellant had three percent permanent impairment for forward flexion and three percent permanent impairment for abduction, resulting in a total six percent permanent impairment.<sup>14</sup> He explained that because the ROM rating was higher, appellant was entitled to a six percent rating based on the ROM

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<sup>6</sup> *Id.* at 564.

<sup>7</sup> *Id.* at 575, Table 17-6.

<sup>8</sup> *Id.* at 576, Table 17-7.

<sup>9</sup> *Id.* at 581, Table 17-9.

<sup>10</sup> *Id.* at 402, Table 15-5.

<sup>11</sup> *Id.* at 406, Table 15-7.

<sup>12</sup> *Id.* at 408, Table 15-8.

<sup>13</sup> *Id.* at 410, Table 15-9.

<sup>14</sup> *Id.* at 475, Table 15-34.

methodology. Dr. Doman found that appellant reached MMI on May 23, 2019, the date of his examination.

On August 8, 2019 Dr. Kuhn concurred with Dr. Doman's rating of six percent permanent impairment of appellant's right upper extremity using the ROM method.

By decision dated August 21, 2019, OWCP granted appellant a schedule award for six percent permanent impairment of the right upper extremity (arm). The period of the award was for 18.72 weeks and ran from May 24 to October 2, 2019.

On February 7, 2020 appellant, through counsel, requested reconsideration of the August 21, 2019 schedule award decision. In support of her request, she submitted a February 4, 2020 report from Dr. D'Auria. Dr. D'Auria disagreed with the opinions of Dr. Doman, the second opinion physician, and Dr. Kuhn, the DMA, regarding appellant's permanent impairment rating. Based on his November 30, 2018 examination findings and diagnostic testing, he asserted that if appellant's claim was accepted for cervical disc displacement without radiculopathy, then the acceptance of appellant's claim should be expanded to include cervical radiculopathy. Dr. D'Auria noted that his examination did include objective findings of right upper extremity motor deficits. While the right upper extremity sensory deficits were more generalized, he found the motor deficits localized at C5, C6, C7, C8, and T1 myotomes. Dr. D'Auria also indicated that he had reviewed appellant's January 13, 2016 and March 30, 2017 magnetic resonance imaging (MRI) scans, which supported his examination findings. He also disagreed with Dr. Doman's reporting that appellant had no upper or lower extremity radicular symptom, numbness, or paresthesia complaints. Dr. D'Auria noted that, when appellant was seen on November 30, 2018, she had complaints of neck pain radiating into the right arm, hand, and fingers; right arm, hand, and fingers tingling and numbness. Therefore, he disagreed with Dr. Doman's opinion that appellant had no permanent impairment due to cervical spine radiculopathy. Regarding right shoulder ROM findings, he advised that three successive independent trials had been conducted as required. Appellant's ROM of the right shoulder reflected abduction of 60 degrees, 70 degrees, and 70 degrees and flexion of 75 degrees, 80 degrees, and 90 degrees. Thus, Dr. D'Auria opined that appellant's permanent impairment based on ROM was nine percent. He found appellant had 29 percent right upper extremity permanent impairment.

In a report dated March 4, 2020, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as OWCP's DMA, reviewed the medical evidence, including Dr. D'Auria's February 4, 2020 permanent impairment rating. Based on the discrepancies in the medical evaluation information of Dr. Doman and Dr. D'Auria, he recommended that OWCP refer appellant for another second opinion evaluation to document appellant's subjective complaints, objective findings, and provide a permanent impairment rating for her cervical spine and right shoulder conditions.

On September 18, 2020 OWCP referred appellant for a second opinion evaluation with Dr. Stephen A. Dawkins, a Board-certified occupational medicine physician, to document appellant's subjective complaints, objective findings, and provide an impairment rating for her cervical spine and right shoulder conditions. On January 22, 2021 it indicated that appellant had been seen by Dr. Dawkins; however his report required clarification.

In a progress report dated March 26, 2021, Dr. D'Auria related that appellant should be seen by a surgeon for her right shoulder condition. In duty status reports (Form CA-17) dated

March 26, April 28, May 27, and June 26, 2021, Dr. D'Auria noted that appellant was advised to resume work on September 24, 2019. He checked "No" to the question of whether appellant was able to perform regular work.

In a work status form dated June 11, 2021, Dr. D'Auria advised that appellant was unable to work from June 11 through 18, 2021.

A June 17, 2021 MRI scan of appellant's right shoulder noted findings of right supraspinatus tendon rotator cuff tear and right subacromial deltoid bursitis joint effusion.

In a report dated June 18, 2021, Dr. Scott Gillogly, a Board-certified orthopedic surgeon, provided physical examination findings. He related appellant's diagnoses as right shoulder full thickness supraspinatus rotator cuff tear, right shoulder pain, right shoulder joint pain, and right shoulder impingement syndrome. Dr. Gillogly indicated that appellant should only work six hours a day as she was having symptoms when working eight hours.

On June 30, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work during the period May 31 through June 11, 2021. For the period June 14 through 18, 2021, she claimed 40 hours of LWOP due to severe pain and an inability to work.

In a letter dated July 1, 2021, OWCP informed appellant that payment was authorized for four hours on June 11, 2021 for a medical appointment. It advised that no evidence had been received supporting her claim for disability for the remaining dates. OWCP requested that she submit documentation supporting her claim for disability and afforded her 30 days to provide the requested information.

In response to OWCP's July 1, 2021 letter, appellant submitted a June 17, 2021 MRI scan as well as additional reports from Dr. D'Auria. In a June 25, 2021 Form CA-17, Dr. D'Auria reiterated the findings from his prior reports. In a June 25, 2021 office visit note, he detailed examination findings and noted that appellant was currently working with restrictions.

On July 7, 2021 OWCP referred appellant for a second opinion evaluation with Dr. Jeffrey A. Fried, a Board-certified orthopedic surgeon, to document appellant's subjective complaints and objective findings, and obtain an assessment of appellant's employment-related condition and any resulting permanent impairment.

In a July 29, 2021 report, Dr. D'Auria requested that OWCP expand its acceptance of appellant's claim to include a right shoulder full-thickness rotator cuff tear as causally related to the accepted November 19, 2015 employment injury. He explained that the prolonged and repetitive activities appellant performed at work resulted in weakening and inflammation of her right shoulder tendons and muscles, and ultimately in a full-thickness supraspinatus tendon tear.

On August 17, 2021 OWCP paid appellant wage-loss compensation for four hours on June 23, 2021 and four hours June 25, 2021 for medical appointments.

By separate decision dated August 17, 2021, OWCP denied appellant's claim for wage-loss compensation for the period June 14 through 18, 2021.

By decision dated September 2, 2021, OWCP denied modification of the August 21, 2019 schedule award determination. It noted that Dr. Gillogly had indicated that appellant might require right shoulder surgery.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>15</sup> has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>16</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>17</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical opinion evidence.<sup>18</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.<sup>19</sup>

The term "disability" is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>20</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>21</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>22</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>23</sup>

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<sup>15</sup> *Supra* note 1.

<sup>16</sup> *See M.T.*, Docket No. 21-0783 (issued December 27, 2021); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>17</sup> *M.T., id.*; *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>18</sup> *M.T., id.*; *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>19</sup> *M.T., id.*; *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>20</sup> 20 C.F.R. § 10.5(f); *M.T., id.*; *J.S.*, Docket No. 19-1035 (issued January 24, 2020); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>21</sup> *M.T., id.*; *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>22</sup> 20 C.F.R. § 10.5(f); *M.T., id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>23</sup> *See M.T., id.*; *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004).

## ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 14 through 18, 2021 causally related to her accepted November 19, 2015 employment injury.

In a work status report dated July 11, 2021, Dr. D'Auria related that appellant was unable to work from June 11 to 18, 2021. In Form CA-17 duty status reports dated March 26, April 28, May 27 and June 26, 2021, he checked "No" to the question of whether appellant was capable of performing her regular work and noted that appellant was advised to resume work on September 24, 2019. Dr. D'Auria, however, did not provide an opinion that appellant was totally disabled from work during the claimed period due to the accepted injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.<sup>24</sup> Therefore, this evidence is insufficient to establish appellant's disability claim.

In a report dated July 29, 2021, Dr. D'Auria requested expansion of the acceptance of appellant's claim to include a right shoulder full-thickness rotator cuff tear as causally related to the accepted November 19, 2015 employment injury. Similarly, Dr. Gillogly diagnosed right shoulder full-thickness supraspinatus rotator cuff tear, right shoulder pain, right shoulder joint pain, and right shoulder impingement syndrome and reduced her work hours from eight to six. However, neither Dr. D'Auria nor Dr. Gillogly provided an opinion on the issue of whether appellant was disabled from work during the claimed period due to her accepted November 19, 2015 employment injury.<sup>25</sup> As previously noted, the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.<sup>26</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

The record also contains a June 17, 2021 MRI scan of the right shoulder. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment factors caused a diagnosed condition.<sup>27</sup>

As the medical evidence of record is insufficient to establish that appellant was totally disabled from work during the claimed period, the Board finds that appellant has not met her burden of proof.

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<sup>24</sup> *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>25</sup> *Id.*

<sup>26</sup> *See M.T.*, Docket No. 21-0783 (issued December 27, 2021); *M.J.*, *supra* note 23; *C.S.*, *supra* note 23; *William A. Archer*, *supra* note 23.

<sup>27</sup> *A.W.*, Docket No. 2201196 (issued November 23, 2022); *S.W.*, Docket No. 21-1105 (issued December 17, 2021); *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### LEGAL PRECEDENT -- ISSUE 2

The schedule award provisions of FECA<sup>28</sup> and its implementing regulations<sup>29</sup> 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. FECA, however, 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 and the Board has concurred in such adoption.<sup>30</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.<sup>31</sup>

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health: A Contemporary Model of Disablement*.<sup>32</sup> Under the sixth edition, for upper extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by GMFH, GMPE, and GMCS.<sup>33</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>34</sup> The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.<sup>35</sup>

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.<sup>36</sup> Furthermore, the back is specifically excluded from the definition of an organ under FECA.<sup>37</sup> The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as

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<sup>28</sup> 5 U.S.C. § 8107.

<sup>29</sup> 20 C.F.R. § 10.404.

<sup>30</sup> *Id.* at § 10.404 (a); *see also J.C.*, Docket No. 21-0288 (issued July 1, 2021); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>31</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.808.5a (March 2017); *see also* Chapter 3.700.2 and Exhibit 1 (January 2010)..

<sup>32</sup> A.M.A., *Guides* 3, section 1.3.

<sup>33</sup> *Id.* at 383-492.

<sup>34</sup> *Id.* at 411.

<sup>35</sup> *J.C.*, *supra* note 30; *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>36</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see J.C., id.*; *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>37</sup> *See* 5 U.S.C. § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that the July/August 2009 edition of *The Guides Newsletter* is to be applied.<sup>38</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.<sup>39</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the case is not in posture for a decision with regard to appellant's claim for an additional schedule award.

In a report dated May 23, 2019, Dr. Doman, a second opinion physician noted that appellant had no radicular symptoms, no complaints of upper extremity numbness or paresthesia, and no complaints of numbness. Appellant's treating physician, Dr. D'Auria, in a February 4, 2020 report, noted examination findings of right upper extremity motor and sensory deficits. In a March 4, 2020 report, Dr. Harris, a DMA, recommended referral to a second opinion physician to document objective finding, subjective complaints, and provide a permanent impairment rating for appellant's right upper extremity.

On September 21, 2020 OWCP referred appellant to Dr. Dawkins for a second opinion evaluation. On January 22, 2021 it indicated that Dr. Dawkin's report required clarification. Subsequently, on July 7, 2021 it referred appellant to Dr. Fried for a second opinion evaluation to provide an assessment of appellant employment-related condition and any resulting permanent impairment. However, OWCP issued a decision on September 2, 2021 denying appellant's request for an additional schedule award prior to receiving Dr. Fried's report.

The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>40</sup> Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case. Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.<sup>41</sup> It issued its September 2, 2021 decision

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<sup>38</sup> *Supra* note 27 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

<sup>39</sup> *See supra* note 31 at Chapter 2.808.6f (March 2017).

<sup>40</sup> *See T.C.*, Docket No. 19-0771 (issued March 17, 2021); *E.W.*, Docket No. 17-0707 (issued September 18, 2017).

<sup>41</sup> *See T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

denying appellant's claim for an additional schedule award prior to receipt of Dr. Fried's report. Therefore, the case must be remanded to OWCP for further development.<sup>42</sup>

On remand OWCP shall review Dr. Fried's report to determine whether appellant is entitled to an additional schedule award due to her accepted November 19, 2015 employment injury.<sup>43</sup> Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 14 through 18, 2021 causally related to her accepted November 19, 2015 employment injury. The Board further finds that this case is not in posture for decision as to whether appellant is entitled to an additional schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed. The Board further finds that the September 2, 2021 OWCP decision is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 16, 2022  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>42</sup> See *T.C., id.; X.Y.*, Docket No. 19-1290 (issued January 24, 2020); *K.G.*, Docket No. 17-0821 (issued May 9, 2018).

<sup>43</sup> See *M.T., supra* note 16; *T.C., id.; R.C.*, Docket No. 19-1385 (issued September 8, 2020).