

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

M.T., Appellant)	
)	
and)	Docket No. 20-1353
)	Issued: May 9, 2022
U.S. POSTAL SERVICE, CRENSHAW)	
IMPERIAL POST OFFICE, Inglewood, CA,)	
Employer)	
)	

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 June 25, 2020 appellant filed a timely appeal from January 2 and June 1, 2020 merit decisions 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 \$4,044.50 during the period February 4 through March 30, 2019 because she received wage-loss compensation for temporary total disability after she returned to full-time work; (3) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (3) whether

¹ 5 U.S.C. § 8101 *et seq.*

appellant has met her burden of proof to establish greater than 31 percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

On May 24, 2000 appellant a 45-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome causally related to factors of her federal employment. OWCP assigned OWCP File No. xxxxxx523 and accepted the claim for bilateral carpal tunnel syndrome. By decision dated August 21, 2001, it granted appellant a schedule award for 23 percent permanent impairment of the right upper extremity and 23 percent permanent impairment of the left upper extremity.

On August 1, 2011 appellant filed a Form CA-2 alleging that she sustained bilateral shoulder, elbow, right thumb, middle finger, and index finger conditions causally related to factors of her federal employment. OWCP accepted the claim under OWCP File No. xxxxxx359 for bilateral shoulder and upper arm sprain, left shoulder impingement syndrome, calcific tendinitis of the left shoulder, and right rotator cuff sprain.² It authorized left shoulder joint surgery, shoulder repair, and shoulder arthroscopic surgery, which was performed on March 23, 2012, and right arthroscopic superior labral anterior-posterior (SLAP) and labral repair with subacromial decompression surgery, which was performed on June 25, 2018. OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls commencing January 13, 2012 and on the periodic rolls commencing July 22, 2018.

By decision dated February 6, 2014, OWCP granted appellant schedule awards for an additional four percent permanent impairment of the right upper extremity and an additional three percent permanent impairment of the left upper extremity. It noted that appellant had previously been granted a schedule award for 23 percent permanent impairment of the right upper extremity and 23 percent permanent impairment of the left upper extremity under OWCP File No. xxxxxx523.

In an August 10, 2018 letter, OWCP outlined appellant's entitlement to compensation benefits. An attached Form EN-1049 instructed that, if she worked during any portion of the covered period, and compensation payments were received *via* either paper check or for payments sent by electronic funds transfer (EFT), she was to return the payment to OWCP even if she had already advised OWCP that she was working. OWCP noted that appellant was expected to monitor her EFT deposits carefully, at least every two weeks.

In progress notes and a duty status report (Form CA-17) dated January 9, 2019, Dr. Hosea Brown, III, a Board-certified internist, released appellant to return to work with restrictions.

In a report of termination of disability and/or payment (Form CA-3) dated March 28, 2019, the employing establishment indicated that appellant had returned to full-time work on February 4, 2019.

² OWCP administratively combined OWCP File Nos. xxxxxx523, and File No. xxxxxx359, designating OWCP File No. xxxxxx359 as the master file.

On March 2, 2019 the EFT payment for the period February 3 through March 2, 2019 was deposited into appellant's account. On March 30, 2019 the EFT for the period March 3 through 30, 2019 was deposited into appellant's account.

On May 21, 2019 OWCP advised appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$4,044.50 for the period February 4 through March 30, 2019 because she returned to full-time modified employment on February 4, 2019, but received wage-loss compensation for total disability through March 30, 2019, a period of 55 days. It related that she was receiving a net compensation payment on the periodic rolls every 28 days in the amount of \$2,059.02. OWCP then calculated that \$2,059.02 divided by 28 days and then multiplied by 55 days equaled an overpayment of \$4,404.50. It further notified appellant of its preliminary finding that she was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known, was incorrect. Additionally, OWCP provided an overpayment action request form and informed her that, within 30 days, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing. It requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

On June 18, 2019 appellant disputed the fact and amount of the overpayment and requested a waiver of recovery of the overpayment. A telephonic precoupment hearing was held on October 18, 2019. No additional information was received.

By decision dated January 2, 2020, an OWCP hearing representative finalized the preliminary overpayment determination indicating that appellant had received an overpayment of compensation in the amount of \$4,044.50 for the period February 4 through March 30, 2019. She determined that appellant was at fault in the creation of the overpayment and, therefore, appellant was not entitled to waiver of recovery of the overpayment. As appellant was not currently in receipt of OWCP benefits, she instructed OWCP to begin appropriate debt collection.

In a January 25, 2020 report, Dr. Charles Xeller, a Board-certified orthopedic surgeon, noted appellant's history of injury and medical treatment. He utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ to provide a permanent impairment rating based upon appellant's diagnosis of right rotator cuff tear. Dr. Xeller found seven percent permanent impairment under the diagnosis-based impairment (DBI) method based upon appellant's right rotator cuff tear. He explained that, using Table 15-5, page 402 of the A.M.A., *Guides*, for a right rotator cuff full-thickness tear would result in seven percent permanent impairment. Dr. Xeller performed three range of motion (ROM) measurements for appellant's right shoulder. Appellant's ROM for the right shoulder was noted as flexion of 94, 99, and 95 degrees, extension 34, 31, and 39, degrees, internal rotation 50, 54, and 32 degrees, abduction 104 degrees, adduction 27 degrees, and external rotation of 76, 93, 82 degrees. Using Table 15-34, page 475, he found three percent impairment for 99 degrees flexion, one percent impairment for 39 degrees extension, three percent impairment for 104 degrees abduction, one percent impairment for 27 degrees adduction, two percent impairment for 54

³ A.M.A., *Guides* (6th ed. 2009).

degrees internal rotation, and 0 percent impairment for 93 degrees external rotation. Dr. Xeller found that these findings totaled 10 percent right upper extremity permanent impairment based on loss of ROM of the right shoulder.

On February 17, 2020 appellant filed a claim for a schedule award (Form CA-7).

On March 5, 2020 OWCP prepared a statement of accepted facts (SOAF) for OWCP File No. xxxxxx523 wherein it noted the accepted conditions as bilateral shoulder strains and that she underwent left shoulder surgery on March 23, 2012 and right shoulder surgery on March 23, 2012. It further noted that it had granted appellant schedule awards for 23 percent permanent impairment of the left and right upper extremities, an additional 4 percent permanent impairment of the right upper extremity, and an additional 3 percent permanent impairment of the left upper extremity.

On March 12, 2020 OWCP requested that OWCP's district medical adviser (DMA) review the March 5, 2020 SOAF and enclosed medical evidence. It referenced OWCP File No. xxxxxx359 and that the accepted conditions were right shoulder joint sprain, left shoulder joint sprain, right rotator cuff capsule sprain, and left shoulder calcific tendinitis.

In a March 20, 2020 report, Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as the DMA, reviewed the medical evidence of record and noted that under the DBI methodology for a rotator cuff tear with normal functional motion, appellant could be awarded six percent permanent impairment of the right upper extremity. He found that her impairment should be calculated using the ROM method as it provided the higher impairment rating. Using Dr. Xeller's ROM measurements, Dr. Katz found that, according to Table 15-34 on page 475 of the A.M.A., *Guides*, 100 degrees flexion yielded three percent permanent impairment, 40 degrees extension yielded one percent permanent impairment, 100 degrees abduction yielded three percent impairment, 30 degrees adduction yielded one percent impairment, 50 degrees internal rotation yielded two percent permanent impairment, and 90 degrees external rotation yielded no impairment. He added the impairment ratings to find 10 percent permanent impairment. Dr. Katz noted that appellant had previously been granted a schedule award for 27 percent right upper extremity permanent impairment based on 5 percent permanent impairment of the right shoulder and 23 percent permanent impairment for right carpal tunnel syndrome. He explained that the prior 5 percent award for the right shoulder permanent impairment would be replaced by the current 10 percent impairment, which would then be combined with the 23 percent permanent impairment for carpal tunnel syndrome resulting in a total 31 percent right upper extremity permanent impairment. Next, Dr. Katz subtracted the prior total award of 27 percent permanent impairment of the right upper extremity from the current 31 percent permanent impairment of the right upper extremity ($31 - 27 = 4$) resulting in an additional 4 percent right upper extremity permanent impairment entitlement. He determined the date of maximum medical improvement (MMI) to be January 25, 2020, the date of Dr. Xeller's impairment rating.

By decision dated May 21, 2020, OWCP granted appellant a schedule award for an additional four percent permanent impairment of the right upper extremity. The award ran for 12.48 weeks for the period January 25 to April 21, 2020. OWCP noted the gross amount of her schedule award was \$9,916.77 and that it had reduced this amount due to an unresolved debt of \$4,064.72. Thus, it advised that her net payment after the reduction for her debt, which was now liquidated, was \$5,852.05.

On June 1, 2020 OWCP reissued the May 21, 2020 schedule award decision with appellant's correct address.

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 his or her duty.⁴ 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.⁵

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.⁶ Section 10.500 of OWCP's regulations provides that compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.⁷ A claimant is not entitled to receive temporary total disability (TTD) benefits and actual earnings for the same time period.⁸ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation for TTD.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$4,044.50 for the period February 4 through March 30, 2019.

The Board finds that the evidence of record establishes that appellant returned to full-time modified-duty work for the employing establishment effective February 4, 2019, but continued to receive wage-loss compensation for TTD through March 30, 2019. As noted above, a claimant is

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8116(a).

⁷ 20 C.F.R. § 10.500(a).

⁸ *See S.S.*, Docket No. 20-0776 (issued March 15, 2021); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *L.S.*, 59 ECAB 350, 352-53 (2008).

⁹ *S.S.*, *id.*; *L.T.*, *id.*; *C.H.*, *id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(a) (September 2018).

not entitled to receive wage-loss compensation benefits for TTD and actual earnings for the same time period.¹⁰ Therefore, an overpayment of compensation was created in this case.

With regard to the amount of overpayment, the Board finds that OWCP properly calculated appellant's compensation paid for the period February 4 through March 30, 2019. Thus, the Board finds that appellant received an overpayment of compensation in the amount of \$4,044.50 for the period February 4 through March 30, 2019.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides as follows 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 this subchapter or would be against equity and good conscience.¹¹ No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.¹²

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.¹³

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provides that whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant was without fault with regard to OWCP's first direct deposit following her return to work, but she was at fault in the creation of the overpayment resulting from the subsequent deposit.

In cases where a claimant receives compensation through direct deposit, the Board has held that OWCP must establish that at the time the claimant received the direct deposit in question that

¹⁰ See *supra* notes 7-10.

¹¹ 5 U.S.C. § 8129(b).

¹² *S.S.*, *supra* note 8; *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *C.L.*, Docket No. 19-0242 (issued August 5, 2019).

¹³ 20 C.F.R. § 10.433(a).

¹⁴ *Id.* at § 10.433(b).

he or she knew or should have known that the payment was incorrect.¹⁵ The Board has held that a claimant who receives payments from OWCP in the form of a direct deposit may 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 EFT deposits is that the claimant lacks the requisite knowledge at the time of the first incorrect payment.¹⁷

Appellant returned to work on February 4, 2019. OWCP paid her compensation for the period February 3 through March 2, 2019 in a direct deposit payment on March 2, 2019. There is no documentation to demonstrate that appellant had clear knowledge at the time the bank received the March 2 2019 direct deposit that the payment was incorrect.¹⁸ The Board thus finds that she was without fault in accepting the initial direct deposit covering the period February 4 through March 2, 2019.

The Board further finds that the case is not in posture for decision regarding the issue of waiver of recovery of the overpayment for the period February 4 through March 2, 2019. The Board will set aside the January 2, 2020 decision regarding the issue of fault as to the March 2, 2019 direct deposit covering the period February 4 through March 2, 2019 and will remand the case for OWCP to determine whether appellant is entitled to waiver of recovery for the portion of the overpayment covering the period February 4 through March 2, 2019.¹⁹

The Board further finds that appellant was at fault in the creation of the overpayment resulting from the subsequent direct deposit payment for the period March 3 through 30, 2020.²⁰

In an August 10, 2018 letter, OWCP notified appellant that, to avoid an overpayment of compensation, she must immediately notify it of her return to work. Appellant was required to reimburse OWCP for compensation paid during a period which she worked. Although OWCP may have been negligent in making incorrect payments, this does not excuse a claimant from accepting payments he or she knew or should have known to be incorrect.²¹ As mentioned above, in cases involving a series of incorrect payments, where the requisite knowledge is established by documentation from OWCP or simply with the passage of time and opportunity for discovery, a claimant will be at fault for accepting the payments subsequently deposited. By the time of the

¹⁵ See *S.S.*, *supra* note 8; *C.H.*, *supra* note 8; see also *Claude T. Green*, 42 ECAB 174 (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 *B.W.*, *supra* note 12; *K.E.*, Docket No. 19-0978 (issued October 25, 2018).

¹⁹ In light of the Board's determination regarding the issues of fault and waiver of recovery of the overpayment, it is premature to address the issue of recovery of the overpayment from the June 1, 2021 schedule award determination.

²⁰ See *C.W.*, Docket No. 19-1653 (issued March 23, 2021); *K.K.*, Docket No. 19-0978 (issued October 21, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *D.W.*, Docket No. 14-0229 (issued April 17, 2014).

²¹ See *C.G.*, Docket No. 15-0701 (issued December 9, 2015).

second payment, appellant should have known that she was not entitled to the same amount of wage-loss compensation as she had received prior to her return to work on February 4, 2019.²² After her receipt of the first direct deposit following her return to work, she was on notice that OWCP began to make payments to her in error and knew or should have known that she was not entitled to the benefit of the subsequent direct deposit.

LEGAL PRECEDENT -- ISSUE 3

The schedule award provisions of FECA²³ and its implementing regulations 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.²⁴ 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.²⁵ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (6th ed. 2009).²⁶

In addressing upper extremity impairments, the sixth edition requires identification of the impairment class of diagnosis (CDX) condition, which is then adjusted by grade modifiers or grade modifiers for functional history (GMFH), grade modifiers for physical examination (GMPE), and grade modifiers for clinical studies (GMCS).²⁷ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).²⁸

The A.M.A., *Guides* also provide that the ROM impairment methodology is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other DBI sections are applicable.²⁹ If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.³⁰ Adjustments for functional history may be made if the evaluator determines that the

²² *Id.*

²³ 5 U.S.C. § 8101 *et seq.*

²⁴ *Id.* at § 8107; 20 C.F.R. § 10.404.

²⁵ 20 C.F.R. § 10.404; *H.H.*, Docket No. 19-1530 (issued June 26, 2020); *L.T.*, Docket No. 18-1031 (issued March 5, 2019); *see also Ronald R. Kraynak*, 53 ECAB 130 (2001).

²⁶ *See supra* note 10 at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *supra* note 10 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (March 2017).

²⁷ A.M.A., *Guides* 383-492.

²⁸ *Id.* at 411.

²⁹ *Id.* at 461.

³⁰ *Id.* at 473.

resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.³¹

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.³² Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

“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.*”³³ (Emphasis in the original.)

The Bulletin further advises:

“If the rating physician provided an assessment using the ROM method and the [A.M.A.] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE.”³⁴

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a 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.³⁵

³¹ *Id.* at 474.

³² FECA Bulletin No. 17-06 (issued May 8, 2017).

³³ *Id.*

³⁴ *Id.*; *see also* H.H., *supra* note 27; V.L., Docket No. 18-0760 (issued November 13, 2018); A.G., Docket No. 18-0329 (issued July 26, 2018).

³⁵ *See supra* note 10 at Chapter 2.808.6(f) (March 2017).

ANALYSIS -- ISSUE 3

The Board finds that appellant has not met her burden of proof to establish greater than 31 percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

In a January 25, 2020 permanent impairment evaluation, Dr. Xeller diagnosed right shoulder rotator cuff tear. He provided ROM findings of the right upper extremity based on three measurements as follows: 99 degrees of flexion, 39 degrees of extension, 104 degrees of abduction, 27 degrees of adduction, 54 degrees of internal rotation, and 93 degrees of external rotation. Using the DBI methodology, Dr. Xeller calculated a right upper extremity impairment of seven percent due to appellant's full-thickness rotator cuff tear under Table 15-5 on page 403, the maximum allowed for that diagnosis. Using the ROM methodology, he calculated 10 percent right upper extremity impairment under Table 15-34, page 475. Dr. Xeller determined that appellant had 10 percent right upper extremity permanent impairment using ROM methodology as it yielded a greater impairment than using the DBI methodology.

In a March 20, 2020 report, Dr. Katz, serving as DMA, reviewed the medical evidence of record and noted that using the DBI methodology for a rotator cuff tear with residual loss, appellant had six percent permanent impairment of the right upper extremity. He found that her impairment should be calculated using the ROM method as it provided the higher impairment rating. Dr. Katz determined that, according to Table 15-34 on page 475 of the A.M.A., *Guides*, 100 degrees flexion yielded three percent permanent impairment, 40 degrees extension yielded one percent permanent impairment, 100 degrees abduction yielded three percent impairment, 30 degrees adduction yielded one percent impairment, 50 degrees internal rotation yielded two percent permanent impairment, and 90 degrees external rotation yielded no impairment. He added the impairment ratings to find 10 percent permanent impairment. Next, Dr. Katz noted that appellant had previously been granted 5 percent permanent impairment for her shoulder, which should now be 10 percent permanent impairment of the right upper extremity and 23 percent permanent impairment for carpal tunnel syndrome resulting in a total schedule award of 31 percent right upper extremity permanent impairment. He then subtracted the prior total award of 27 percent permanent impairment of the right upper extremity from the current 31 percent permanent impairment of the right upper extremity ($31 - 27 = 4$) resulting in entitlement to an additional 4 percent right upper extremity permanent impairment. Dr. Katz determined the date of MMI to be January 25, 2020, the date of Dr. Xeller's impairment rating.

The Board finds that Dr. Katz, serving as a DMA, properly explained that the medical evidence of record established that appellant sustained 10 percent right upper extremity permanent impairment under the A.M.A., *Guides*, based upon her right shoulder condition. Dr. Katz explained that she had previously been awarded a schedule award for 27 percent permanent impairment of the right upper extremity based on combined values of 5 percent permanent impairment of the right shoulder and 23 percent permanent impairment for carpal tunnel syndrome, resulting in a total 31 percent permanent impairment of the right upper extremity. He thereafter properly calculated that she was entitled to an additional four percent schedule award for

permanent impairment of the right upper extremity.³⁶ As the record contains no other probative, rationalized medical opinion which supports that she had greater impairment of the right upper extremity based upon the A.M.A., *Guides*, appellant has not met her burden of proof to establish greater than 31 percent permanent impairment of the right upper extremity for which she received schedule award compensation.³⁷

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 impairment.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,044.50 for the period February 4 through March 30, 2019. The Board further finds that she was without fault in the creation of the overpayment for the period February 4 through March 2, 2019, and that she was at fault in the creation of the overpayment for the period March 3 through 30, 2019. The case will be remanded to OWCP to consider waiver of recovery of the overpayment for the period February 4 through March 2, 2019. The Board also finds appellant has not met her burden of proof to establish greater than 31 percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

³⁶ See *H.H.*, *supra* note 27; *O.F.*, Docket No. 19-0986 (issued February 12, 2020); *K.J.*, Docket No. 19-0901 (issued December 6, 2019).

³⁷ See *H.H.*, *id.*; *J.H.*, Docket No. 18-1207 (issued June 20, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed and the January 2, 2020 decision is affirmed in part and set aside in part; the case is remanded for further proceedings consistent with the decision of the Board.

Issued: May 9, 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