

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

J.C., Appellant)	
)	
and)	Docket No. 24-0284
)	Issued: April 25, 2024
U.S. POSTAL SERVICE, COPPELL POST)	
OFFICE, Coppell, TX, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On January 17, 2024 appellant filed a timely appeal from an August 30, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0284.

On September 8, 2021 appellant, then a 69-year-old vehicle dispatching clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 22, 2021 he injured his neck and shoulders when a coworker attacked him while in the performance of duty. OWCP accepted the claim for sprain of ligaments of the cervical and thoracic areas of the spine, and strain of the muscles and tendons of the bilateral shoulder rotator cuff. Appellant did not stop work.¹

In a January 19, 2023 permanent impairment report, Dr. Antonio Rozier, a Board-certified physiatrist, noted appellant's physical examination findings of January 19, 2023, which included three range of motion measurements. He opined that appellant reached maximum medical improvement on February 6, 2023. Utilizing the sixth edition of the American Medical

¹ Under OWCP File No. xxxxxx229, OWCP accepted appellant's January 24, 2005 traumatic injury claim for a cervical sprain. By decision dated November 21, 2005, it awarded him a schedule award for nine percent permanent impairment for loss of use of his right upper extremity based on loss of motion for the right elbow and right shoulder. The award ran for 28.08 weeks for the period from October 11, 2005 to April 25, 2006. Appellant's claims have not been administratively combined.

Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)² and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment* (July/August 2009) (*The Guides Newsletter*), Dr. Rozier calculated 8 percent left upper extremity permanent impairment and 9 percent right upper extremity permanent impairment. He found zero percent upper extremity impairment for the diagnoses of sprain of ligaments of the cervical spine and thoracic spine as there was no upper limb radiculopathy on examination. Utilizing the diagnosed-based impairment (DBI) methodology, Dr. Rozier found that appellant had seven percent left upper extremity impairment. He explained that under Table 15-5 page 403, appellant's class of diagnosis (CDX) was left shoulder rotator cuff injury, full-thickness tear with residual loss, a Class 1 impairment, with default value of grade C or 5 percent. Dr. Rozier assigned grade modifier for functional history (GMFH) of 2 due to symptoms with normal activity under Table 15-7, page 406; grade modifier for physical examination (GMPE) of 1 due to mild range of motion deficits under Table 15-8, page 408; and a grade modifier clinical study (GMCS) of 3 due to severe pathology under Table 15-9, page 410. He applied the net adjustment formula and found a net adjustment of 3, for a Class 1, grade E impairment, which resulted in 7 percent left upper extremity permanent impairment. Dr. Rozier also utilized Table 15-34 (Shoulder Range of Motion), page 475, and determined that appellant had 3 percent impairment due to 110 degrees flexion; 0 percent impairment due to 50 degrees extension; 3 percent impairment due to 90 degrees abduction; 0 percent impairment due to 40 degrees adduction; 2 percent impairment due to 50 degrees internal rotation; and 0 percent impairment due to 80 degrees external rotation, for a total of 8 percent permanent impairment of the left upper extremity. He indicated that under Table 15-35, page 477, an 8 percent upper extremity impairment was within a grade modifier 1. As the GMFH was 2 due to symptoms with normal activity under Table 15-7, page 406, Dr. Rozier found a net modifier of 1. He found that range of motion (ROM) impairment would be increased by total range of motion multiplied by 5 percent for a final ROM impairment of 8 percent for left upper extremity impairment. Dr. Rozier concluded that since the ROM method yielded the higher percentage rating of the left upper extremity, appellant had 8 percent permanent impairment of the left upper extremity.

For the right upper extremity, under the DBI methodology, Dr. Rozier found that appellant had five percent right upper extremity impairment. Under Table 15-5 page 403, he found appellant's CDX of right shoulder rotator cuff injury, partial-thickness tear with residual loss, with a Class 1 impairment, resulted in a default value of grade C or 3 percent. Dr. Rozier assigned a GMFH of 2 due to symptoms with normal activity under Table 15-7, page 406; a GMPE of 1 due to mild range of motion deficits under Table 15-8, page 408; and a GMCS of 3 due to severe pathology under Table 15-9, page 410. He applied the net adjustment formula and found a net adjustment of 3 or final impairment of a Class 1 grade E impairment, which resulted in 5 percent right upper extremity. Dr. Rozier also utilized Table 15-34 (Shoulder Range of Motion), page 475, and determined that appellant had 3 percent impairment due to 120 degrees flexion; 0 percent impairment due to 50 degrees extension; 3 percent impairment due to 120 degrees abduction; 1 percent impairment due to 30 degrees adduction; 2 percent impairment due to 60 degrees internal rotation; and 0 percent impairment due to 60 degrees external rotation, for a total of 9 percent permanent impairment of the right upper extremity. Under Table 15-36, page 477, he found total range of motion multiplied by 5 percent for a final ROM impairment of 9 percent for right upper

² A.M.A., *Guides* (6th ed. 2009).

extremity impairment. Dr. Rozier concluded that since the ROM rating method yielded the higher percentage rating of the right upper extremity, appellant had 9 percent permanent impairment of the right upper extremity.

On June 24, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On July 11, 2023 OWCP referred the record, a July 11, 2023 statement of accepted facts (SOAF), and a series of questions to Dr. Herbert White, Jr., an occupational medicine specialist serving as a District Medical Adviser (DMA) to provide an opinion on permanent impairment under the standards of the A.M.A., *Guides* and *The Guides Newsletter*.

In a July 14, 2023 report, Dr. White reviewed the July 11, 2023 SOAF, noted Dr. Rozier's February 6, 2023 permanent impairment report and the physical findings contained therein, and the diagnostic testing of record. Regarding the right shoulder, he found 4 percent upper extremity permanent impairment under DBI methodology³ and concurred with Dr. Rozier's 9 percent upper extremity impairment under ROM methodology. For the ROM methodology, Dr. White reviewed and concurred with Dr. Rozier's findings under Table 15-34, page 475, that appellant had a total of 9 percent permanent impairment of the right upper extremity. He reported that because the ROM impairment exceeded the DBI impairment, he opined that appellant had 9 percent permanent impairment of the right upper extremity.

For the left upper extremity, Dr. White concurred with Dr. Rozier's permanent impairment calculations of 7 percent impairment under the DBI methodology and 8 percent impairment under the ROM methodology, noting that the ROM methodology yielded the greatest impairment. He explained that as the ROM method resulted in a higher rating than the DBI method, the ROM calculation should be used. Thus, Dr. White opined that appellant had 8 percent left upper extremity impairment.

Dr. White also concurred with Dr. Rozier's assessment that appellant had normal sensory and motor findings of the cervical nerve roots. He further noted that the A.M.A., *Guides* did not provide an impairment rating for the thoracic spine. Dr. White concluded that the above impairment rating represented appellant's total current impairment of the affected members and included any prior percentage awarded.

On August 4, 2023 OWCP updated the SOAF to note that appellant had a prior schedule award for nine percent right upper extremity under OWCP File No. xxxxxx296. It then requested clarification from Dr. White regarding whether appellant's current permanent impairment was in addition to his previous impairment rating under OWCP File No. xxxxxx229 for nine percent right upper extremity impairment.

³ Under Table 15-5, page 404, Dr. White found CDX was labral lesion, which had CDX 1 default grade C of 3 percent impairment. He found GMFH 2, GMPE 1 and that GMCS was excluded as it was used for diagnostic placement. Dr. White found the net adjustment formula resulted in a net adjustment of 1, which resulted in a final impairment of CDX 1 Grade D or 4 percent permanent impairment of right upper extremity.

In an August 8, 2023 amended report, Dr. White reiterated his impairment findings for both the left and right upper extremities.

On August 14, 2023 OWCP asked for additional clarification from Dr. White regarding whether the left upper extremity permanent impairment remained at eight percent and was the only additional permanent impairment as appellant already received an award for nine percent permanent impairment of the right upper extremity.

In an August 18, 2023 amended report, Dr. White reiterated his impairment findings for both the left and right upper extremities, noting that the ROM impairment methodology yielded the highest impairment and appellant had 8 percent left upper extremity impairment and 9 percent right upper extremity impairment. Regarding appellant's previous schedule award for 9 percent permanent impairment of the right upper extremity, he cited section 2.5c Apportionment on page 25 of the A.M.A., *Guides*, which provides that a total impairment rating is derived irrespective of preexisting and resulting conditions and that in this case the impairment was nine percent. Dr. White indicated that the region of the prior right upper extremity award was not specified. He opined that if the prior 9 percent right upper extremity award was for the shoulder, then appellant would have no additional impairment incurred (9 percent minus 9 percent). However, if the prior right upper extremity award was for a region of the right upper extremity other than the shoulder (elbow, wrist, hand/digit) then apportionment would not apply, and the impairments should be combined under the Combined Values Chart for total impairment of 17 percent (9 percent combined with 9 percent). Thus, the additional right upper extremity impairment occurred would be 8 percent (17 percent – 9 percent). Dr. White reiterated that the left upper extremity impairment remained at 8 percent.

By decision dated August 30, 2023, OWCP granted appellant a schedule award for an 8 percent permanent impairment of left upper extremity. It noted that his 9 percent right upper extremity impairment was negated by the prior award of 9 percent right upper extremity impairment in OWCP File No. xxxxxx229. The permanent impairment rating was based on the reports of Dr. Rozier, dated January 19, 2023, and Dr. White, the DMA, dated August 18, 2023. The award ran 24.96 weeks from February 6 to July 30, 2023.

The Board, having duly considered this matter, finds that the case is not in posture for decision.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files. For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition, doubling is required.

Herein, appellant has a previously-accepted claim for a cervical sprain under OWCP File No. xxxxxx229. By decision dated November 21, 2005, under that file, OWCP awarded him a schedule award for nine percent permanent impairment for loss of use of his right upper extremity based on loss of motion for the right elbow and right shoulder. He subsequently filed the instant claim under OWCP File No. xxxxxx097, which OWCP accepted for sprain of ligaments of the cervical and thoracic areas of the spine, and strain of the muscles and tendons of the bilateral shoulder rotator cuff. By decision dated August 30, 2023, under OWCP File No. xxxxxx097,

OWCP granted appellant a schedule award for 8 percent permanent impairment of left upper extremity. It noted that his 9 percent right upper extremity impairment rating was negated by the prior award of 9 percent right upper extremity impairment under OWCP File No. xxxxxx229.

Therefore, for a full and fair adjudication, the case must be remanded for OWCP to administratively combine OWCP File Nos. xxxxxx229 and xxxxxx097. On remand, OWCP shall review all relevant medical evidence regarding whether appellant has greater right upper extremity permanent impairment than that which was previously awarded. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the August 30, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 25, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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