

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

K.S., Appellant)	
)	
and)	Docket No. 24-0564
)	Issued: June 28, 2024
U.S. POSTAL SERVICE, LOS ANGELES)	
PROCESSING & DISTRIBUTION CENTER,)	
Los Angeles, CA, Employer)	
)	

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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 2, 2024 appellant filed a timely appeal from a February 7, 2024 merit 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 60 percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 27, 2022 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 2022 she felt a pop in her left shoulder when reaching to pull a flat off a culling belt while in the performance of duty. OWCP accepted the claim for rotator cuff tear or rupture of the left shoulder. Appellant performed modified work intermittently until January 2, 2023 when she stopped work. On January 20, 2023 she underwent an OWCP-authorized left shoulder arthroscopy and biceps tenotomy, rotator cuff repair, subacromial decompression, acromioplasty, distal clavicle undersurface co-plane, and shoulder immobilizer placement, which was performed by Dr. Ronald Navarro, a Board-certified orthopedic surgeon. Appellant returned to full-time modified duty with restrictions on August 7, 2023. OWCP paid her wage-loss compensation on the supplemental rolls from January 3, 2023 through September 22, 2023.²

On October 2, 2023 appellant filed a claim (Form CA-7) for a schedule award.

On November 20, 2023 OWCP referred appellant, along with the case record and a statement of accepted facts (SOAF), to Dr. Arash Dini, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation. It requested that Dr. Dini provide a rating of appellant's left upper extremity permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

In a January 4, 2024 report, Dr. Dini reviewed the SOAF and appellant's medical record. He related her physical examination findings and opined that she had reached maximum medical improvement (MMI). Utilizing the standards of the A.M.A., *Guides*, Dr. Dini applied the diagnosis-based impairment (DBI) rating method and found that appellant had five percent permanent impairment of the left upper extremity due to her shoulder condition. Under Table 15-5, Shoulder Regional Grid: Upper Extremity Impairment, page 403, he found that the class of diagnosis (CDX) of a rotator cuff injury, full-thickness tear was a Class 1 impairment with default rating of five percent. Dr. Dini assigned a grade modifier for functional history (GMFH) of 1 and a grade modifier for physical examination (GMPE) of 1; and related that a grade modifier for clinical studies (GMCS) was not applicable. He utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (N/A) = 0$, which resulted in a grade C or five percent permanent impairment. Dr. Dini also utilized the range of motion (ROM) impairment rating method at Table 15-34, page 475, and found 8 percent left upper extremity permanent impairment. He related that the highest obtained measurements for ROM of the left shoulder were three percent permanent impairment for flexion of 140 degrees, zero percent permanent impairment for 50 degrees of extension, three percent permanent impairment for abduction of 120 degrees, zero percent impairment for 50 degrees adduction, two percent permanent impairment for internal rotation at 50 degrees, and zero percent impairment for external

² The record reflects that under OWCP File No. xxxxxx977 appellant has an accepted traumatic injury claim for an April 4, 1991 left wrist radiocarpal sprain; left ganglion and synovium cyst; and left carpal tunnel syndrome. OWCP paid a pellant schedule award compensation for 56 percent permanent impairment of the left upper extremity due to her left wrist impairment. The period of the award ran from February 26, 1993 to October 20, 1996.

³ A.M.A., *Guides* (6th ed. 2009).

rotation of 60 degrees. Dr. Dini added those values and found eight percent permanent impairment of the left upper extremity. Under Table 15-35, page 477, he found that the impairment rating was consistent with grade modifier of 1. Based on Table 15-7, page 406, Dr. Dini noted that as appellant had a GMFH of 1, there was no grade difference therefore modification of the ROM impairment rating was not necessary. He concluded that appellant had an eight percent upper extremity permanent impairment under the ROM rating method. Dr. Dini explained that as the ROM rating method yielded the higher rating over the DBI method, appellant was entitled to a schedule award for an eight percent permanent impairment of the left upper extremity due to her shoulder condition.

On January 17, 2024 OWCP referred appellant's case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA).

On January 14, 2024 Dr. Katz reviewed Dr. Dini's January 4, 2024 report and concurred with his permanent impairment calculations under both the DBI and ROM rating methods of the A.M.A., *Guides*. Since the ROM permanent impairment rating of 8 percent exceeded the DBI permanent impairment rating of 5 percent, he also concurred with Dr. Dini that appellant had an 8 percent permanent impairment of left upper extremity due to her left shoulder condition. Dr. Katz further opined that appellant had reached MMI on January 4, 2024, the date of Dr. Dini's impairment examination.

On January 30, 2024 OWCP requested clarification from Dr. Katz. It noted that appellant had previously received a schedule award for 56 percent permanent impairment of the left upper extremity. OWCP requested that Dr. Katz address whether appellant's current eight percent left upper extremity permanent impairment due to her shoulder condition was included in the prior award, or whether it should be considered in addition to the prior award.⁴

In a February 4, 2024 supplemental report, Dr. Katz reported that he reviewed the SOAF and medical records. He continued to opine that appellant had an eight percent left upper extremity permanent impairment due to her shoulder condition. Dr. Katz also related that the prior left upper extremity award was for a nonoverlapping condition of the left wrist. Under Appendix A, Combined Values Chart, page 604, Dr. Katz combined the prior, nonoverlapping impairment of 56 percent with the 8 percent present impairment and found 60 percent permanent impairment. He then subtracted the prior nonoverlapping impairment of 56 percent from the current impairment of 60 percent and found that the net additional permanent impairment of the left upper extremity was 4 percent.

By decision dated February 7, 2024, OWCP granted appellant a schedule award for an additional four percent left upper extremity permanent impairment. The award ran for 12.48 weeks from January 4 to March 31, 2024. OWCP accorded the weight of the evidence to the January 14 and February 4, 2024 reports of Dr. Katz, the DMA, who reviewed the January 4, 2024 findings of Dr. Dini, the second opinion examiner.

⁴ See *supra* note 2.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁵ and its implementing federal regulations,⁶ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

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.⁹ 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:

“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.” (Emphasis in the original.)¹⁰

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 shoulders, the relevant portions 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).¹¹ Under Chapter 2.3, evaluators

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ FECA Bulletin No. 17-06 (issued May 8, 2017).

¹⁰ *Id.*

¹¹ See A.M.A., *Guides* (6th ed. 2009) 405-12. Table 15-5 also provides that, if motion loss is present for a claimant with certain diagnosed shoulder conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such an ROM rating stands alone and is not combined with a DBI rating. *Id.* at 398-05, 475-78.

are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹²

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.¹³

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 60 percent permanent impairment of her left upper extremity, for which she has received schedule award compensation.

On January 14, 2024 Dr. Katz reviewed Dr. Dini's January 4, 2024 permanent impairment rating and concurred with his impairment calculations and rating under the standards of the sixth edition of the A.M.A., *Guides*. He applied the DBI rating method to Dr. Dini's findings and found that, under Table 15-5, Shoulder Regional Grid: Upper Extremity Impairment, page 403, a rotator cuff injury, full-thickness tear with residual loss was CDX 1 with a default impairment rating of 5 percent impairment. Dr. Katz noted that Dr. Dini had assigned a GMFH of 1; a GMPE of 1; and found that GMCS was not applicable. He utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (N/A) = 0$ and found a final grade C, five percent permanent impairment. Dr. Katz also applied the ROM rating method to Dr. Dini's findings. Under Table 15-34, page 475, he found that the highest obtained measurements for ROM of the left shoulder were three percent for flexion of 140 degrees, zero percent for 50 degrees of extension, three percent for abduction of 120 degrees, zero percent for 50 degrees adduction, two percent for internal rotation of 50 degrees, and zero percent for external rotation of 60 degrees. Dr. Katz added those values and found eight percent permanent impairment of the left upper extremity. Under Table 15-35, page 477, he further agreed with Dr. Dini's finding that as the 8 percent impairment rating was consistent with grade modifier 1, and under Table 15-7 page 406, appellant had a GMFH of 1, there was no grade difference, therefore modification of the rating was not needed. Dr. Katz concluded that as the ROM method yielded a higher rating over the DBI method, appellant was entitled to a schedule award for eight percent permanent impairment of the

¹² *Id.* at 23-28.

¹³ See *supra* note 8 at Chapter 2.808.6(f) (March 2017). See also *B.C.*, Docket No. 21-0702 (issued March 25, 2022); *D.L.*, Docket No. 20-1016 (issued December 8, 2020); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹⁴ 20 C.F.R. § 10.404(d). See *B.C.*, *id.*; *D.P.*, Docket No. 19-1514 (issued October 21, 2020); *S.M.*, Docket No. 17-1826 (issued February 26, 2018).

left upper extremity. He also opined that appellant had reached MMI on January 4, 2024, the date of Dr. Dini's impairment evaluation.

In his February 4, 2024 amended report, Dr. Katz noted that appellant's prior award of 56 percent to the left upper extremity did not overlap with the current shoulder permanent impairment of eight percent. The prior schedule award was granted for a left wrist permanent impairment, and it did not overlap with appellant's current left shoulder permanent impairment.¹⁵ Dr. Katz calculated the net award for appellant's left shoulder permanent impairment by utilizing the Combined Values Chart and combining the prior, nonoverlapping impairment of 56 percent with the 8 percent present shoulder impairment to find 60 percent impairment. The prior impairment of 56 percent was then subtracted from the current total impairment of 60 percent to find a total of 4 percent additional permanent impairment of the left upper extremity.

The Board finds that OWCP properly relied on the opinion of Dr. Katz. Dr. Katz properly calculated appellant's left upper extremity permanent impairment in accordance with the standards of the sixth edition of the A.M.A., *Guides*.

As the medical evidence of record is insufficient to establish greater than 60 percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation, the Board finds that appellant has not met her burden of proof.

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 permanent impairment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than 60 percent permanent impairment of her left upper extremity, for which she has received schedule award compensation.

¹⁵ See *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 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