United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant **and** **U.S. POSTAL SERVICE, PREUSS POST OFFICE, Los Angeles, CA, Employer**	)	**Docket No. 24-0114** **Issued: May 7, 2024**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 21, 2023 appellant filed a timely appeal from a July 31, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than eight percent permanent impairment of the right upper extremity, eight percent permanent impairment of the left upper extremity, one percent permanent impairment of the right lower extremity, and/or

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the July 21, 2023 decision, appellant submitted additional evidence to OWCP. 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.*

one percent permanent impairment of the left lower extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

On August 7, 2021 appellant, then a 53-year-old city delivery specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome, bilateral shoulder impingement, and bilateral plantar fasciitis due to factors of her federal employment, including handling of increased quantities of heavy parcels during the COVID-19 pandemic, repetitive upper extremity motion, and extended hours of mail delivery. She noted that she first became aware of her conditions and their relation to her federal employment on August 4, 2021. Appellant stopped work on August 4, 2021. On November 8, 2021 OWCP accepted her claim for strain of muscle, fascia, and tendon of the lower back, plantar fascial fibromatosis, and bilateral carpal tunnel syndrome.

Appellant submitted a February 14, 2022 impairment rating by Dr. John B. Dorsey, a Board-certified orthopedic surgeon. Dr. Dorsey indicated that appellant sought treatment for lumbar strain, bilateral plantar fascia fibromatosis, bilateral carpal tunnel syndrome, and bilateral partial rotator cuff tears. He noted that October 1, 2021 magnetic resonance imaging (MRI) scans demonstrated partial supraspinatus tendon tears in the bilateral shoulders. Dr. Dorsey opined that the bilateral rotator cuff tears, as well as disc herniations from L3 through S1 with nerve root compression, were caused by factors of appellant's federal employment. He also opined that appellant's condition had reached "permanent and stationary" status. Dr. Dorsey referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[3] and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 15-5 (Shoulder Regional Grid), page 402, the class of diagnosis (CDX) for rotator cuff tear or tendon rupture with residual loss of function and some limitation of motion resulted in a Class 1, grade C impairment with a default value of five percent for each upper extremity. He assigned a grade modifier for functional history (GMFH) of 2 based on a moderate pain problem with symptoms during normal activities. Dr. Dorsey assigned a grade modifier for physical examination (GMPE) of 2 for moderate findings and objective abnormalities. He assigned a grade modifier for clinical studies (GMCS) of 2 as imaging studies demonstrated rotator cuff tears or related labial lesion. Dr. Dorsey utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (2-1) + (2-1) + (2-1) = +3. He assigned seven percent impairment of the left upper extremity and seven percent impairment of the right upper extremity.[4] Dr. Dorsey indicated that the DBI rating method was more applicable than the range of motion (ROM) method as restricted motion was not the main concern of appellant's impairment. Regarding the wrists, he noted a GMCS of 1 for conduction delay on electrodiagnostic studies, a GMFH of 2 for significant intermittent symptoms, and a GMPE of 1 for a normal sensory examination with no weakness. Dr. Dorsey added the modifiers to total 4, then divided by 3 to equal 1.33, rounded upward to 2. However, as appellant had a *Quick*DASH score characterized as severe, this raised the percentage to 3, to equal 3 percent permanent impairment of each upper extremity. Utilizing the Combined Values Chart on page 604, Dr. Dorsey combined the 7 and 3

[3] A.M.A., *Guides* (6th ed. 2009).

[4] Dr. Dorsey also expressed a whole person impairment due to upper extremity impairment.

percent impairments for a total 10 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity.

On March 18, 2022 OWCP expanded the acceptance of appellant's conditions to include bilateral upper limb strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level.

OWCP received an updated impairment rating dated January 30, 2023 by Dr. Dorsey. Dr. Dorsey performed three trials of ROM of the shoulders measured with a goniometer, with full flexion, extension, abduction, adduction, internal rotation bilaterally to 50 degrees, full external rotation on the right, and external rotation limited to 70 degrees on the left. He also noted a *Quick*DASH score of 63. Dr. Dorsey opined that appellant had attained maximum medical improvement (MMI) as of December 29, 2022 and affirmed his impairment rating of 10 percent permanent impairment of each upper extremity as presented in his February 14, 2022 report.[5] Regarding the lower extremities, he referred to the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 16-2 (Foot and Ankle Regional Grid), page 501, the CDX for plantar fasciitis and calcaneal spurring at the hindfoot and Achilles tendon insertion with significant, consistent palpatory and/or radiographic findings resulted in a Class 1, grade C impairment with a default value of one for each lower extremity. Dr. Dorsey found no applicable grade modifiers, resulting in one percent permanent impairment of the left lower extremity and one percent permanent impairment of the right lower extremity.

On February 14, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On April 18, 2023 Dr. Michael M. Katz, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA), reviewed a statement of accepted facts (SOAF) and the medical record, including Dr. Dorsey's February 14, 2022 and April 12, 2023 reports. He agreed with Dr. Dorsey's findings and impairment rating for the lower extremities but disagreed with his findings and impairment rating for the upper extremities. Regarding the bilateral shoulder conditions, Dr. Katz opined that imaging studies and clinical findings indicated partial thickness rotator cuff tears with normal motion, and not the complete tears with functional loss noted by Dr. Dorsey. He utilized the DBI rating method to find that, under Table 15-5, the CDX for partial thickness rotator cuff tear or tendon rupture with normal motion resulted in a Class 1, grade C impairment with a default value of three percent for each upper extremity. Dr. Katz assigned a GMFH of 2, GMPE of 2, and GMCS of 2 based on a review of the medical evidence of record. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (2-1) + (2-1) + (2-1) = +3, modified to +2 as the maximum allowable adjustment, which raised the default three percent upward to grade E, to equal five percent permanent impairment. Regarding the wrists, Dr. Katz referenced Table 15-23 (Entrapment/Compression Neuropathy Impairment), page 449, and noted a GMCS of 1 for conduction delay on electrodiagnostic studies, a GMFH of

[5] On its face, Dr. Dorsey's January 30, 2023 report indicated December 29, 2023 as the date appellant reached MMI and referred to a February 14, 2023 impairment rating. In a development letter dated February 22, 2023, OWCP requested that Dr. Dorsey clarify the date of MMI and the date of the prior impairment rating. Accompanying an April 12, 2023 letter, counsel provided a revised excerpt of Dr. Dorsey's January 30, 2023 report correcting the date of MMI to December 29, 2022 and the date of the prior impairment rating to February 14, 2022.

2 for significant intermittent symptoms, and a GMPE of 1. He added the modifiers to total 4, then divided by 3 to equal 1.33, rounded downwards to 1, whereas Dr. Dorsey rounded the modifier upwards to 2. As appellant had a *Quick*DASH score of 63, characterized as severe, this raised the percentage to 3, to equal 3 percent permanent impairment of each upper extremity. Utilizing the Combined Values Chart on page 604, Dr. Katz combined the five and three percent impairments for a total eight percent permanent impairment of the left upper extremity and eight percent permanent impairment of the right upper extremity. He also calculated permanent impairment using the ROM method. Referring to Table 15-34 (Shoulder Range of Motion), page 475, Dr. Katz found 2 percent permanent impairment of the right upper extremity and 2 percent permanent impairment of the left upper extremity for internal rotation limited to 50 degrees. He assigned a GMFH of 1, increased to 2 due to the *Quick*DASH score of 63. Dr. Katz utilized the net adjustment formula to equal two percent permanent impairment of the left upper extremity and two percent permanent impairment of the right upper extremity. He found that the DBI rating method was preferable to the ROM rating method for the upper extremities as the former resulted in a higher percentage of permanent impairment.

In a development letter dated May 11, 2023, OWCP informed appellant of Dr. Katz' opinion and advised her of the type of medical evidence necessary to respond to his impairment rating. It provided 30 days for her to submit the requested evidence.

In a June 29, 2023 report, Dr. Dorsey responded to Dr. Katz' impairment rating. He agreed with Dr. Katz that as appellant had bilateral partial supraspinatus tears and not full-thickness tears, the appropriate default impairment was three percent and not five percent. Dr. Dorsey concurred with his calculation of eight percent permanent impairment of the left upper extremity, eight percent permanent impairment of the left upper extremity, one percent permanent impairment of the left lower extremity, and one percent permanent impairment of the right lower extremity.

By decision dated July 31, 2023, OWCP granted appellant a schedule award for eight percent impairment of the left upper extremity, eight percent permanent impairment of the right upper extremity, one percent permanent impairment of the left lower extremity, and one percent permanent impairment of the right lower extremity. The award ran for 55.68 weeks, from June 1, 2023 through June 24, 2024, and was based on Dr. Dorsey's February 14, 2022 report and Dr. Katz' April 18, 2023 DMA report.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] and its implementing regulations[7] 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

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

adoption.[8] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.[9]

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.[10] 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 the default grade value), the net adjustment formula is applied using GMFH, GMPE, and GMCS.[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[13]

The A.M.A., *Guides* also provide that the ROM impairment 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.[14] 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.[15] 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.[16]

Regarding the application of ROM or DBI impairment 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

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[8] *Id.* at § 10.404 (a); *see also T.T.*, Docket No. 18-1622 (issued May 14, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards,* Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] *M.W.*, Docket No. 23-0832 (issued December 27, 2023); *K.R.*, Docket No. 20-1675 (issued August 19, 2022); *M.P.*, Docket No. 13-2087 (issued April 8, 2014).

[11] A.M.A., *Guides* 405-12; *see M.P., id.*; *M.W.*, *id.*

[12] *Id.* at 411.

[13] *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[14] A.M.A., *Guides* 461.

[15] *Id.* at 473.

[16] *Id.* at 474.

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.*" (Emphasis in the original.)[17]

The Bulletin further advises:

"If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* allows 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."[18]

ANALYSIS

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

Appellant submitted February 14, 2022 and January 30, 2023 reports wherein Dr. Dorsey, an attending physician, reported that bilateral shoulder ROM examination findings were good. Referring to the sixth edition of the A.M.A., *Guides*, Dr. Dorsey utilized the DBI rating method to find that under Table 15-5 (Shoulder Regional Grid), appellant had seven percent impairment of the left upper extremity and seven percent permanent impairment of the right upper extremity due to a CDX of bilateral rotator cuff tears with a GMFH of 2, GMPE of 2, and GMCS of 2. He found three percent permanent impairment of the left upper extremity and a three percent permanent impairment of the right upper extremity due to carpal tunnel syndrome, with a GMCS of 1, GMFH of 2, and GMPE of 1, and a *Quick*DASH score of 63. Dr. Dorsey combined the two impairments utilizing the Combined Values Chart to find 10 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity. Regarding the lower extremities, he utilized the DBI rating method to find one percent permanent impairment of the left lower extremity and three percent permanent impairment of the right lower extremity under Table 16-2 (Foot and Ankle Regional Grid) for plantar fasciitis without applicable grade modifiers.

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

[18] *Id*.

In accordance with its procedures, OWCP properly routed the case record to Dr. Katz in his role as DMA, who indicated in an April 18, 2023 report that he had reviewed Dr. Dorsey's reports and concurred with the one percent permanent impairment rating of the left lower extremity and one percent permanent impairment of the right lower extremity but disagreed with the bilateral upper extremity impairment ratings. Dr. Katz utilized the DBI rating method to find that, under Table 15-5, the CDX for right shoulder rotator cuff, partial thickness tear resulted in a Class 1 impairment with a grade C default value of three percent. He assigned a GMFH of 2, GMPE of 2, and GMCS of 2 based on his review of the medical evidence of record. Dr. Katz utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (2-1) + (2-1) + (2-1) = +3, modified to +2 as the maximum allowed, which raised the default grade C value of three percent upward to grade E, resulting in 5 percent permanent impairment of the right upper extremity and 5 percent permanent impairment of the left upper extremity. Under the ROM rating method, he referred to Table 15-34 (Shoulder Range of Motion) and determined that appellant had two percent permanent impairment of the left upper extremity and two percent permanent impairment of the right upper extremity for internal rotation limited to 50 degrees. As the DBI rating method produced the higher impairment rating, Dr. Katz concluded that she had five percent permanent impairment of the right upper extremity and five percent permanent of the left upper extremity. Regarding the wrists, he referenced Table 15-23 (Entrapment/Compression Neuropathy Impairment), noted a GMCS of 1 for conduction delay on electrodiagnostic studies, a GMFH of 2, and a GMPE of 1. Dr. Katz added the modifiers to total 4, divided by 3 to equal 1.33, rounded downwards to 1, and then raised to 3 due to the *Quick*DASH score of 63 to equal 3 percent permanent impairment of the left upper extremity and 3 percent permanent impairment of the right upper extremity. Finally, he combined the five and three percent impairments for a total eight percent permanent impairment of the left upper extremity and eight percent permanent impairment of the right upper extremity.

The Board finds that OWCP properly relied on the opinion of Dr. Katz, the DMA, to find that appellant had no greater than eight percent permanent impairment of the right upper extremity, eight percent permanent impairment of the left upper extremity, one percent permanent impairment of the right lower extremity permanent impairment, and/or one percent permanent impairment of the left lower extremity. Dr. Katz properly applied the standards of the A.M.A., *Guides* to the physical examination findings of Dr. Dorsey, and properly referred to the A.M.A., *Guides* in calculating appellant's percentage of permanent impairment of the bilateral upper and lower extremities.[19] The Board finds that, in the above-described calculations, Dr. Katz reached conclusions regarding her permanent impairment that are in accordance with the standards of the sixth edition of the A.M.A., *Guides*.[20]

As the medical evidence of record is insufficient to establish greater than the eight percent permanent impairment of the right upper extremity, eight percent permanent impairment of the left upper extremity, one percent permanent impairment of the right lower extremity, and one percent

[19] *M.W.*, *supra* note 10; *see R.G.*, Docket No. 21-0491 (issued March 23, 2023).

[20] *See T.S.*, Docket No. 22-0924 (issued April 27, 2023).

permanent impairment of the left lower extremity previously awarded, 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 eight percent permanent impairment of the right upper extremity, eight percent permanent impairment of the left upper extremity, one percent permanent impairment of the right lower extremity, and/or one percent permanent impairment of the left lower extremity, for which she previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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