United States Department of Labor
Employees' Compensation Appeals Board

A.G., Appellant	)	
	)	**Docket No. 25-0099**
and	)	**Issued: January 31, 2025**
	)	
U.S. POSTAL SERVICE, BRANDON POST OFFICE, Brandon, MS, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 5, 2024 appellant filed a timely appeal from an October 15, 2024 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 11 percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the October 15, 2024 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. 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*.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 27, 2019 appellant, then a 45-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her left shoulder, including rotator cuff strain and swelling, causally related to factors of her federal employment due to handling mail and engaging in other repetitive motion duties with her left arm. She noted that she first became aware of her claimed condition on April 7, 2018, and realized its relation to her federal employment on August 5, 2019. Appellant stopped work on August 24, 2019. OWCP assigned the claim OWCP File No. xxxxxx173 and accepted it for left shoulder tendinitis/lesions. On September 11, 2019 appellant underwent OWCP-authorized left shoulder/arm surgery, including arthroscopic debridement/acromioplasty, distal clavicle excision, rotator cuff repair, and biceps tenodesis. OWCP paid her wage-loss compensation on the supplemental rolls, effective October 12, 2019.

On August 8, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On October 14, 2020 OWCP referred appellant's case to Dr. Alan J. Goodman, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), and requested that he provide an opinion on the permanent impairment of appellant's left upper extremity under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[4] In an October 22, 2020 report, Dr. Goodman utilized Table 15-5 (Shoulder Regional Grid), beginning on page 401 of the sixth edition of the A.M.A., *Guides,* and applied the diagnosis-based impairment (DBI) rating method. He determined that appellant's left shoulder acromioclavicular (AC) joint injury fell under a class of diagnosis (CDX) of a Class 1 impairment with a default value of 10 percent. Dr. Goodman assigned a grade modifier for functional history (GMFH) of 1; a grade modifier for physical examination (GMPE) of 1; and a grade modifier for clinical studies (GMCS) of 2. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), which resulted in a grade D or 11 percent permanent impairment of the left upper extremity. Dr. Goodman opined that application of the range of motion (ROM) rating method would not provide a greater permanent impairment finding than application of the DBI rating method. He concluded that appellant had 11 percent permanent impairment of the left upper extremity.

In a November 6, 2020 report, Dr. Sergey S. Dzugan, a Board-certified orthopedic surgeon, diagnosed traumatic incomplete tear of the left rotator cuff, left shoulder tendinitis, and acute left shoulder pain. He recommended left shoulder surgery. Appellant stopped work on November 17, 2020 and underwent left shoulder arthroscopy with lysis of adhesions.

By decision dated November 17, 2020, OWCP granted appellant a schedule award for 11 percent permanent impairment of the left upper extremity. The award ran for 34.32 weeks from

[3] Docket No. 23-0045 (issued February 15, 2024).

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

April 8 through December 4, 2020, and was based on the impairment rating of Dr. Goodman, the DMA.

Appellant continued to visit Dr. Dzugan for post-surgery care, and on March 8, 2021, she returned to full-duty work as a rural carrier. She stopped work on September 23, 2021.

Appellant subsequently submitted an August 20, 2021 preoperative examination report in which Dr. Dzugan diagnosed left carpal tunnel syndrome. She also submitted August 26, September 3 and 24, 2021 reports, wherein Dr. Dzugan indicated that she presented for follow-up care after undergoing left carpal tunnel release surgery on August 23, 2021. In September 3 and 24, 2021 reports, Dr. Dzugan advised that appellant reported she was "doing better" with respect to her left hand. In the September 24, 2021 report, he diagnosed left rotator cuff tendinitis and "left carpal tunnel release [one] month ago."

Appellant returned to full duty as a rural carrier on or about November 15, 2021. She stopped work on March 31, 2022.

In an April 8, 2022 report, Dr. James M. Weaver, a Board-certified orthopedic surgeon, reported the findings of his physical examination, including left shoulder ROM findings and diagnosed adhesions of the left shoulder joint, history of repair of the left rotator cuff, and left shoulder stiffness. He indicated that, utilizing Table 15-34 on page 475 of the sixth edition of the A.M.A., *Guides*, appellant had 3 percent impairment due to restricted forward flexion, 2 percent impairment due to restricted extension, 2 percent impairment due to restricted external rotation, 1 percent impairment due to restricted internal rotation, 3 percent impairment due to restricted abduction; and 1 percent impairment due to restricted abduction, which equaled 12 percent permanent impairment of the left upper extremity. Dr. Weaver found that appellant reached maximum medical improvement (MMI) on March 28, 2022.

On June 2, 2022 OWCP expanded the acceptance of appellant's claim to include strain of muscles and tendons of the rotator cuff of the left shoulder.

In an August 18, 2022 letter, OWCP requested that Dr. Goodman, the DMA, comment on the April 8, 2022 impairment rating of Dr. Weaver and clarify whether appellant had greater than 11 percent permanent impairment of the left upper extremity

In an August 25, 2022 report, Dr. Goodman utilized Table 15-5 beginning on page 401 of the sixth edition of the A.M.A., *Guides* and applied the DBI rating method to determine that appellant had 10 percent permanent impairment of the left upper extremity. He determined that appellant's left shoulder AC joint injury fell under a CDX of a Class 1 impairment with a default value of 10 percent. Dr. Goodman assigned a GMFH of 1 due to appellant's mild problem; a GMPE of 0 due to inconsistent physical examination findings; and a GMCS of 2 due to magnetic resonance imaging (MRI) scan findings. He utilized the net adjustment formula, which resulted in no movement from the default value for a grade C or 10 percent permanent impairment of the left upper extremity. Dr. Goodman opined that it was not possible for him to apply the ROM rating method, noting that there was no documentation that Dr. Weaver took three measurements of each type of ROM. He therefore concluded that appellant's DBI rating of 10 percent permanent impairment of the left upper extremity represented the total extent of the permanent impairment of

that extremity.[5] Dr. Goodman noted that as appellant previously received a schedule award for 11 percent permanent impairment of the left upper extremity, she was not entitled to additional schedule award compensation.

By decision dated September 26, 2022, OWCP denied appellant's claim for an additional schedule award, as the medical evidence of record was insufficient to establish greater than 11 percent permanent impairment of her left upper extremity, for which she previously received a schedule award.[6]

Appellant appealed to the Board. By decision dated February 15, 2024, the Board set aside the September 26, 2022 decision, and remanded the case to OWCP for further development, to be followed by the issuance of a *de novo* decision.[7] The Board noted that, although Dr. Goodman attempted to conduct a rating calculation using the ROM method, the case record did not contain recent ROM findings for properly conducting a left upper extremity permanent impairment rating under the ROM method. The Board remanded the case to OWCP to apply FECA Bulletin No. 17-06 and the standards of the sixth edition of the A.M.A., *Guides*, as well as to conduct any other such further development as deemed necessary.

On March 5, 2024 OWCP received the findings of December 19, 2023 left shoulder x-rays, which revealed no acute findings.

In a March 6, 2024 report, Dr. Michelle A. Sliva, a family medicine specialist, reported physical examination findings and diagnosed left shoulder conditions, including chronic pain, adhesive capsulitis, and rotator cuff tendinitis.

On March 29, 2024 OWCP referred appellant's case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a DMA. It requested that he review the case record and evaluate the permanent impairment of appellant's left upper extremity under the standards of the sixth edition of the A.M.A., *Guides*. In an April 8, 2028 report, Dr. Katz indicated that the medical evidence of record lacked sufficient detail to permit assignment of a permanent impairment rating based on a review of the case record. He recommended either directing Dr. Sliva to provide an impairment evaluation or obtain an impairment evaluation from a Board-certified orthopedic surgeon or physiatrist.

In April and May 2024, OWCP received additional medical records, including an April 18, 2024 report by Rae Hebert, a nurse practitioner, which addressed appellant's complaints of left shoulder pain. Ms. Hebert advised that appellant was being referred to an orthopedist for further evaluation of her left shoulder. A May 7, 2024 MRI scan of the left shoulder demonstrated partial-

[5] Dr. Goodman found that appellant reached MMI on April 8, 2022.

[6] On August 15, 2023 appellant filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2023 she sustained an injury when loading packages in a mail truck while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx788 and accepted it for sprains of ligaments of the cervical, thoracic, and lumbar spines. It administratively combined OWCP File Nos. xxxxxx788 and xxxxxx173, designating with the latter serving as the master file.

[7] *Supra* note 3. The Board also addressed OWCP decisions denying appellant's request for expansion of the accepted conditions and her claim for wage-loss compensation due to periods of disability from work. These matters are not currently before the Board.

thickness tears of the supraspinatus and infraspinatus tendons, and a superior labrum anterior to posterior (SLAP) tear. OWCP also received reports which had previously been of record.

By decision dated May 16, 2024, OWCP denied appellant's claim for an additional schedule award.

On June 17, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Samuel Meredith, a Board-certified orthopedic surgeon, for a second opinion examination and a permanent impairment rating of the left upper extremity.

On July 8, 2024 OWCP received a June 24, 2024 report wherein Dr. Jeffrey Witty, a Board-certified orthopedic surgeon, reported physical examination results, including left shoulder pain, weakness, and stiffness, and indicated that a left shoulder MRI scan demonstrated a large rotator cuff tear. Dr. Witty indicated that appellant required further work-up of her left shoulder "to understand what the next best step will be."

In a July 22, 2024 report, Dr. Meredith discussed appellant's factual and medical history, detailing her prior left shoulder surgeries and left shoulder complaints of pain and stiffness. He noted that appellant brought medical records indicating that she was seeing a surgeon who is now considering a third procedure based on the most recent MRI scan, which demonstrated a probable full-thickness tear of her left rotator cuff and a left-sided SLAP lesion. Dr. Meredith indicated, "He and [appellant] are currently considering the possibility of a third operation." He provided physical examination findings, including left shoulder ROM findings. Dr. Meredith advised that appellant had no neurologic findings in the left upper extremity, but noted that ROM of the left shoulder was significantly restricted. He opined that, if appellant were at MMI, the best criteria for calculation of impairment would be based on ROM and, given the multiple anatomic structures involved, it would be difficult to perform a DBI rating. Dr. Meredith noted, "I assume that the requested impairment rating will be placed on hold until the claimant has gone through her full range of treatment options and some steady rate [sic] can be reached in the distant future."

On August 5, 2024 OWCP requested that Dr. Meredith provide a supplemental report clarifying his opinion regarding MMI.

In an August 22, 2024 report, Dr. Witty noted adhesive capsulitis symptoms in appellant's left shoulder, and observed that an MRI scan from 2021 demonstrated a left rotator cuff tear. He recommended further treatment, including an intra-articular injection and physical therapy. Dr. Witty directed appellant to return in a month.

On August 30, 2024 OWCP received an August 8, 2024 report, wherein Dr. Meredith noted that he had been asked to further comment on the question of MMI. Dr. Meredith indicated that appellant experienced very unsatisfactory results from two prior surgeries, and that additional pathology had been noted on an MRI scan. He commented that there was ongoing discussion about appellant undergoing a third left shoulder procedure. Dr. Meredith noted, "[t]he outcome of the third procedure would be unpredictable and for that reason I did not consider her to be at [MMI]. Things could conceivably be better or worse in the foreseeable short-term future."

On September 13, 2024 OWCP referred appellant's case to Dr. Katz, the DMA, and requested that he review the case record, including Dr. Meredith's reports, and provide an opinion on permanent impairment of appellant's left upper extremity.

In a September 19, 2024 report, Dr. Katz indicated that Dr. Meredith opined that appellant had not reached MMI as a third left shoulder surgery was under consideration. He noted, "[g]iven the above, I would at this time concur with Dr. Meredith that if another surgery is imminent, MMI should not be considered to be present, and no recommendation of impairment is made."

By decision dated October 15, 2024, OWCP denied modification of its May 16, 2024 decision.[8]

LEGAL PRECEDENT

The schedule award provisions of FECA,[9] and its implementing regulations,[10] 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 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.[11] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[12] The sixth edition requires identifying the class for the CDX, which is then adjusted by grade modifiers GMFH, GMPE, and GMCS.[13] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[14]

The period covered by a schedule award commences on the date that the employee reaches MMI from the residuals of the employment injury. MMI means that the physical condition of the injured member of the body has stabilized and will not improve further.[15] The determination of the date of MMI is factual in nature and depends primarily on the medical evidence.[16] To support a schedule award, the case file must contain competent medical evidence showing that the impairment has reached a permanent and fixed state, and indicating the date on which this occurred, *i.e.*, the date of MMI.[17]

[8] OWCP noted that, once appellant had reached MMI, she could submit supporting medical evidence and file a new claim for an additional schedule award.

[9] 5 U.S.C. § 8107.

[10] 20 C.F.R. § 10.404.

[11] *Id*.

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

[13] A.M.A., *Guides* 494-531.

[14] *Id*. at 521.

[15] *Adela Hernandez-Piris*, 35 ECAB 839 (1984).

[16] *J.B.*, Docket No. 11-1469 (issued February 14, 2012); *Franklin L. Armfield*, 28 ECAB 445 (1977).

[17] *See supra* note 9 at Chapter 2.808.5b (March 2017); *M.H.*, Docket No. 23-1076 (issued March 12, 2024).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 11 percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

By decision dated February 15, 2024, the Board set aside OWCP's September 26, 2022 decision, and remanded the case for further development followed by a *de novo* decision.

On remand OWCP referred appellant to Dr. Meredith for a second opinion examination and a permanent impairment rating. In a July 22, 2024 report, Dr. Meredith discussed appellant's prior left shoulder surgeries and detailed the physical examination findings. He noted that appellant brought medical records indicating that she was seeing a surgeon who is now considering a third procedure based on the most recent MRI scan, which demonstrated a probable full-thickness tear of her left rotator cuff and a left-sided SLAP lesion. Dr. Meredith opined that, if appellant were at MMI, the best criteria for calculation of impairment would be based on ROM and, given the multiple anatomic structures involved, it would be difficult to perform a diagnosis-based impairment rating. He noted, "I assume that the requested impairment rating will be placed on hold until the claimant has gone through her full range of treatment options and some steady rate [sic] can be reached in the distant future." In an August 8, 2024 supplemental report, Dr. Meredith indicated that appellant experienced very unsatisfactory results from two prior surgeries, and that additional pathology had been noted on an MRI scan. He commented that there was ongoing discussion about appellant undergoing a third left shoulder procedure. Dr. Meredith noted, "[t]he outcome of the third procedure would be unpredictable and for that reason I did not consider her to be at [MMI]."

The reports of Dr. Meredith established that appellant was not at MMI at the time of his evaluation, and therefore, it was not possible to perform an impairment rating at that time.[18] The Board has reviewed the opinion of Dr. Meredith and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue. Accordingly, OWCP properly relied on Dr. Meredith's opinion and found that appellant had not met her burden of proof to establish greater than 11 percent permanent impairment of her left upper extremity, for which she previously received a schedule award.[19]

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 11 percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

[18] *See* notes 12 through 14.

[19] *P.G.*, Docket No. 24-0437 (issued June 26, 2024); *S.V.*, Docket No. 23-0474 (issued August 1, 2023).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed.[20]

Issued: January 31, 2025
Washington, DC

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

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

[20] James D. McGinley, Alternate Judge, participated in the preparation of this decision, but was no longer a member of the Board effective January 12, 2025.