

OWCP, on June 17, 2024, referred appellant, the case record, and a statement of accepted facts (SOAF) to Dr. Jon P. Kelly, a Board-certified orthopedic surgeon, for a second opinion

examination regarding his left shoulder. In a report dated June 21, 2024, Dr. Kelly diagnosed preexisting supraspinatus tendinitis, partial bursal side tear, and left radial head fracture status post open reduction and internal fixation with incomplete recovery of motion. He found that appellant had four percent permanent impairment of the left upper extremity due to his loss of range of motion of his left shoulder using Table 15-34 of page 475 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),¹ and five percent permanent impairment of the left upper extremity due to loss of range of motion of the left elbow using Table 15-33 page 474 of the A.M.A., *Guides*.

On July 27, 2024 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), found that appellant had nine percent permanent impairment of the left upper extremity. He noted, however, that he had previously received a schedule award for 11 percent permanent impairment of the left upper extremity for a left shoulder condition, and therefore found that there had been no increase in appellant's left upper extremity impairment.

By decision dated August 22, 2024, OWCP denied appellant's schedule award claim, finding that the medical evidence did not establish a permanent impairment to a scheduled member or function of the body.

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

The Federal Employees' Compensation Act² (FECA) and its regulations provide for the reduction of compensation for subsequent injury to the same scheduled member. Specifically, benefits payable under section 8107(c) shall be reduced by the period of compensation paid or payable 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.³ The Board has held that OWCP must adequately explain how the latter impairment duplicated the compensation the claimant previously received under a separate file number.⁴

In this case it remains unclear whether appellant's permanent impairment of the left upper extremity found under the current claim, OWCP File No. xxxxxx675, duplicated the schedule award previously paid for 11 percent permanent impairment of the left upper extremity under OWCP File No. xxxxxx928. The case record before the Board is limited to OWCP File No. xxxxxx675. Pursuant to its procedures, OWCP has determined that cases should be combined

¹ A.M.A., *Guides* 6th ed (2009).

² 5 U.S.C. § 8101 *et seq.*

³ *Id.* at § 8108; 20 C.F.R. § 10.404(d); *see also R.B.*, Docket No. 09-1786 (issued July 1, 2010).

⁴ *Order Remanding Case, G.D.*, Docket No. 25-0085 (issued November 18, 2024); *J.V.*, Docket No. 17-1766 (issued April 3, 2018); *T.S.*, Docket No. 09-1308 (issued December 22, 2009).

when correct adjudication of the issues depends on frequent cross-reference between files.⁵ In order to obtain sufficient clarification as to whether appellant's recent rating would duplicate the prior schedule award, in whole or in part, his claims must be combined.⁶

Therefore, for a full and fair adjudication, the case shall be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx675, with OWCP File No. xxxxxx928. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision which explains whether appellant's impairment rating duplicates the prior schedule award in whole or in part. Accordingly,

IT IS HEREBY ORDERED THAT the August 22, 2024 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.⁷

Issued: January 31, 2025
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

⁶ *Order Remanding Case, T.C.*, Docket No. 24-0418 (issued June 3, 2024); *Order Remanding Case, R.B.*, Docket No. 13-792 (issued July 25, 2013).

⁷ James D. McGinley, Alternate Judge, participated in the preparation of this order, but was no longer a member of the Board effective January 12, 2025.