

ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

FACTUAL HISTORY

This case has previously been before the Board regarding a different issue.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 April 28, 2011 appellant, then a 39-year-old part-time flexible city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 25, 2011 she sustained back, left knee, left foot, shoulder, and neck injuries as the result of a motor vehicle accident in the performance of duty. She stopped work on April 26, 2011. OWCP accepted the claim for cervical, thoracic, lumbar sprains, and left knee and ankle contusions. It later expanded the acceptance of the claim to include left-sided sciatica and L4-5 herniated disc. OWCP paid appellant wage-loss compensation on the supplemental rolls as of July 11, 2011 and on the periodic rolls as of February 12, 2012. It again paid her wage-loss compensation on the supplemental rolls from June 3 through August 25, 2012.

On September 7, 2012 OWCP terminated appellant's wage-loss compensation and medical benefits, effective September 6, 2012. An OWCP hearing representative affirmed the termination of benefits by decision dated February 25, 2013. Appellant filed an appeal with the Board on March 26, 2013 and, by decision dated August 13, 2013, the Board affirmed the termination of compensation benefits and the denial of appellant's claim for continuing compensation benefits.⁴

On September 14, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated September 15, 2020, OWCP requested that appellant submit an impairment evaluation addressing whether she had reached maximum medical improvement (MMI) and provide an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵ It indicated that, to date, no medical evidence had been received in support of her claim for a schedule award. OWCP advised that, if appellant's physician was unable or unwilling to provide the required report, to notify OWCP in writing and if her case met the essential elements for a schedule award claim, she would be scheduled to be seen by a second opinion specialist. It afforded her 30 days to submit additional medical evidence in support of her schedule award claim. OWCP noted that, if the requested medical evidence was not received within 30 days from the date of the letter, a decision would be made based on the evidence in the file. No response was received.

³ Docket No. 13-1049 (issued August 16, 2013).

⁴ *Id.*

⁵ A.M.A., *Guides* (6th ed. 2009).

By decision dated November 18, 2020, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On November 24, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on March 9, 2021. During the hearing, counsel requested that the case be remanded for OWCP to refer appellant for a permanent impairment rating.

By decision dated April 21, 2021, the hearing representative affirmed OWCP's November 18, 2020 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁶ and its implementing federal 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. 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.⁸ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁹

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.¹⁰ OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence, which shows that the impairment has reached a permanent and fixed state and indicates that the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.¹¹ Its procedures further provide that, if a claimant has not submitted a permanent impairment evaluation, it should request a detailed report that includes a discussion of how the impairment rating was calculated.¹² If the claimant does not provide an impairment evaluation

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.* at 10.404(a).

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

¹⁰ *N.S.*, Docket No. 21-0508 (issued September 22, 2021); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹¹ *Supra* note 9 at Chapter 2.808.5 (March 2017).

¹² *Id.* at Chapter 2.808.6(a) (March 2017).

and there is no indication of permanent impairment in the medical evidence of file, the claims examiner may proceed with a formal denial of the award.¹³

Neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.¹⁴ Furthermore, the back is specifically excluded from the definition of organ under FECA.¹⁵ The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter* is to be applied.¹⁶ The Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.¹⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

OWCP accepted the claim for cervical, thoracic, and lumbar sprains, left knee and ankle contusions, left-sided sciatica, and L4-5 herniated disc due to the April 25, 2011 employment injury. On September 14, 2020 appellant filed a schedule award claim (Form CA-7).

OWCP, on September 15, 2020, requested that appellant submit a permanent impairment evaluation from her physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant did not, however, submit any medical evidence establishing permanent impairment.

As noted above, appellant must submit an evaluation from a physician that includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the

¹³ *Id.* at Chapter 2.808.6(c).

¹⁴ *N.S.*, *supra* note 10; *K.Y.*, Docket No. 18-0730 (issued August 21, 2019); *L.L.*, Docket No. 19-0214 (issued May 23, 2019); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

¹⁵ *See* 5 U.S.C. § 8101(19); *see also N.S.*, *supra* note 10; *G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹⁶ *Supra* note 9 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

¹⁷ *N.S.*, *supra* note 10; *E.D.*, Docket No. 13-2024 (issued April 24, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁸ As appellant has not submitted any medical evidence supporting permanent impairment of a scheduled member or function of the body due to her accepted conditions, the Board finds that she 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 impairment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁸ See *D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).