

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

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<b>D.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1330</b>
	)	<b>Issued: February 19, 2021</b>
<b>DEPARTMENT OF THE AIR FORCE, NELLIS</b>	)	
<b>AIR FORCE BASE, NV, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 8, 2020 appellant filed a timely appeal from an April 9, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> The Board notes that, during the pendency of this appeal, OWCP issued a December 14, 2020 decision, which denied appellant's claim for a schedule award. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. §§ 501.2(c)(3), 10.626; *see J.C.*, Docket No. 19-1849, n.2 (issued November 17, 2020); *Arlonia B. Taylor*, 44 ECAB 591 (1993) (Member, Groom concurring in part and dissenting in part); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's December 14, 2020 decision is set aside as null and void.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence on appeal. 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.*

## 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 on different issues.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On December 16, 1987 appellant, then a 32-year-old intermittent store worker, filed a traumatic injury claim (CA-1) alleging that on November 7, 1987 she injured her low back while lifting a case of vinegar while in the performance of duty.<sup>5</sup> She stopped work on November 8, 1987 and returned-to-modified duty on December 15, 1987. OWCP accepted appellant's claim for low back strain. Appellant filed claims for intermittent periods of disability for which OWCP paid her wage-loss compensation on the supplemental rolls beginning December 23, 1987.

On October 20, 1993 appellant accepted a modified-position job offer as a store worker on an intermittent work schedule. By decision dated November 10, 1993, OWCP reduced her wage-loss compensation benefits to zero based on her actual wages as a store worker. It reissued the decision on January 31, 1994.

Appellant resigned from federal employment, effective January 3, 1994.<sup>6</sup>

On February 3, 2020 appellant filed a claim for a schedule award (Form CA-7).

In a March 6, 2020 development letter, OWCP requested that appellant's treating physician submit an impairment evaluation report in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>7</sup> It afforded her 30 days to submit additional medical evidence in support of her schedule award claim.

In an April 9, 2020 decision, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish that she sustained a permanent impairment due to her accepted employment-related low back sprain.

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<sup>4</sup> Docket No. 92-1253 (issued March 23, 1993); Docket No. 97-2321 (issued December 14, 1999); Docket No. 12-1364 (issued September 12, 2012), *petition for recon. denied*, Docket No. 12-1364 (issued February 19, 2013).

<sup>5</sup> OWCP assigned the present claim OWCP File No. xxxxxx263. Appellant has a prior claim for an April 12, 1987 alleged low back injury which OWCP assigned OWCP File No. xxxxxx649. On April 7, 1988 OWCP administratively combined OWCP File No. xxxxxx263 with OWCP File No. xxxxxx649, designating OWCP File No. xxxxxx263 as the master file.

<sup>6</sup> Appellant continued to receive medical treatment and filed several notices of recurrences (Form CA-2a) claiming that she sustained recurrences of disability on October 11, 1996, February 23, 2001, and August 24, 2009. OWCP subsequently denied these claims.

<sup>7</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>8</sup> and its implementing federal regulations,<sup>9</sup> 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, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants.<sup>10</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.<sup>11</sup> The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.<sup>12</sup>

A claimant has the burden of proof under FECA to establish permanent impairment of a scheduled member or function of the body as a result of his or her employment injury entitling him or her to a schedule award.<sup>13</sup> OWCP 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 the date on which this occurred (date of maximum medical improvement), 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*.<sup>14</sup> 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.<sup>15</sup> If the claimant does not provide an impairment evaluation, 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.<sup>16</sup>

## 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.

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<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404.

<sup>10</sup> *Id.* at § 10.404(a).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>12</sup> *D.S.*, Docket No. 18-1140 (issued January 29, 2019); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>13</sup> *See M.G.*, Docket No. 19-0823 (issued September 17, 2019); *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>14</sup> *Supra* note 11 at Chapter 2.808.5 (March 2017).

<sup>15</sup> *Id.* at Chapter 2.808.6(a) (March 2017).

<sup>16</sup> *Id.* at Chapter 2.808.6(c) (March 2017).

On February 3, 2020 appellant filed a claim for a schedule award. No medical evidence was received in support of her schedule award claim. In a March 6, 2020 development letter, OWCP requested a medical opinion from her treating physician regarding the extent of her permanent impairment in accordance with the A.M.A., *Guides*. Appellant, however, did not submit the requested evidence.

As noted above, if the claimant does not provide an impairment evaluation 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.<sup>17</sup> Because appellant did not submit medical evidence to establish permanent impairment of a scheduled member or function of the body, in accordance with the sixth edition of the A.M.A., *Guides*, she has not met her burden of proof to establish her schedule award claim.<sup>18</sup>

On appeal, appellant argues that OWCP erroneously closed her claim and denied her multiple recurrence of disability claims. The Board notes, however, that it only has jurisdiction to review the April 9, 2020 OWCP decision denying her request for a schedule award.<sup>19</sup> As explained above, the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body causally related to the accepted November 7, 1987 employment injury, warranting a schedule award.

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.

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<sup>17</sup> *Id.*

<sup>18</sup> See *T.M.*, Docket No. 19-1126 (issued September 22, 2020).

<sup>19</sup> The Board notes that the appellant has filed occupational disease and recurrence of disability claims on February 19, 2020, however, as OWCP has not adjudicated these claims, the Board does not have jurisdiction to review these claims. 5 U.S.C. § 8101; 20 C.F.R. §§ 501.2(c) and 501.3.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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