

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

A.S., Appellant

and

PEACE CORPS, Yaoundé, Cameroon, Employer

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**Docket No. 12-1375
Issued: February 12, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2012 appellant timely appealed the June 5, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which denied reconsideration. He also appealed OWCP's May 22, 2012 merit decision denying a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award claim.²

ISSUES

The issues are: (1) whether appellant has a ratable impairment of a scheduled member; and (2) whether OWCP properly denied her May 29, 2012 request for reconsideration.

¹ 5 U.S.C. §§ 8101-8193.

² The current record includes evidence received after OWCP issued its June 5, 2012 final decision. The Board's review is limited to the evidence of record at the time OWCP issued its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

This case was previously before the Board.³ Appellant, a 44-year-old former Peace Corps volunteer, has an accepted claim for psychosis, depression -- single episode, which arose on or about December 15, 1991. The Board previously affirmed OWCP's denial of a schedule award.⁴ When the case was last on appeal, the Board set aside OWCP's June 27, 2011 decision because it was unclear what standard of review had been applied with respect to appellant's request for reconsideration.⁵ Accordingly, the Board remanded the case to OWCP for proper adjudication of appellant's request for reconsideration.⁶

On remand, OWCP reviewed the merits of the previously denied schedule award claim. Appellant had submitted various psychiatric treatment records dating back to March 2009. However, the medical evidence did not specifically address whether appellant had permanent impairment of a scheduled member. By decision dated December 2, 2011, OWCP denied modification.

On December 6, 2011 appellant requested reconsideration. He submitted recent psychiatric treatment records dated October 11, November 15, December 13, 2011, January 11, February 9 and March 8, 2012.

In a decision dated May 22, 2012, OWCP denied modification. It explained that FECA did not cover schedule awards for psychiatric claims.

On May 29, 2012 appellant requested reconsideration. He did not submit any additional medical evidence at the time.

By decision dated June 5, 2012, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁷ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the*

³ Docket No. 09-1145 (issued August 20, 2009) and Docket No 11-1677 (issued October 26, 2011).

⁴ In its August 20, 2009 decision, the Board explained that the brain was not included among the list of scheduled members under FECA or its implementing regulations and as such, a schedule award for brain damage was not authorized.

⁵ In its October 26, 2011 decision, the Board also found that OWCP failed to comply with 20 C.F.R. § 10.126.

⁶ The Board's August 20, 2009 and October 26, 2011 decisions are incorporated herein by reference.

⁷ 5 U.S.C. § 8107(c). Under FECA, an "organ" means a part of the body that performs a special function. This definition specifically "excludes the brain, heart and back...." *Id.* at § 8101(19).

Evaluation of Permanent Impairment as the appropriate standard for evaluating schedule losses.⁸ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.⁹

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or in the implementing regulations.¹⁰ The list of scheduled members includes the eye, arm, hand, fingers, leg, foot and toes.¹¹ Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.¹² By authority granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina.¹³ Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.¹⁴ Moreover, FECA and its implementing regulations do not specifically authorize payment of a schedule award for loss of cognitive function.¹⁵

ANALYSIS -- ISSUE 1

Appellant's claim has been accepted for psychosis, depression -- single episode.¹⁶ FECA does not authorize payment of schedule award benefits for impairment attributable to mental and/or behavioral disorders. The Board previously affirmed OWCP's denial of a schedule award for what appellant characterized as "brain damage." The brain is not considered an "organ" as that term is defined under FECA.¹⁷ Since the Board last reviewed the merits of the claim, appellant has submitted additional psychiatric treatment notes covering the period March 31, 2009 through March 8, 2012. His current diagnosis is schizoaffective disorder, bipolar type.¹⁸ While the above-noted treatment records document appellant's ongoing psychiatric disorder,

⁸ 20 C.F.R. § 10.404.

⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

¹⁰ *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

¹¹ 5 U.S.C. § 8107(c).

¹² *Id.*

¹³ *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(a).

¹⁴ *Id.* at § 8107(c); 20 C.F.R. § 10.404(a); see *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000). However, a schedule award is permissible where the employment-related back condition affects the upper and/or lower extremities. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a(3).

¹⁵ *Brent A. Barnes*, 56 ECAB 336, 339 (2005).

¹⁶ ICD-9 Code No. 296.2.

¹⁷ 5 U.S.C. § 8101(19).

¹⁸ Appellant also has a differential diagnosis of substance-induced mood disorder attributable to Lariam; a drug used for the prevention and treatment of malaria.

these records do not establish permanent impairment of a recognized scheduled member under FECA. As such, OWCP properly denied appellant's claim for a schedule award.

LEGAL PRECEDENT -- ISSUE 2

OWCP has the discretion to reopen a case for review on the merits.¹⁹ An application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁰ When an application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²¹

ANALYSIS -- ISSUE 2

Appellant's May 29, 2012 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. He submitted the appeal request form that accompanied OWCP's May 22, 2012 merit decision. Without elaborating, appellant merely placed an "x" on the appropriate line indicating he was seeking reconsideration. He also submitted an undated letter in which he accused OWCP of lying. Appellant did not advance a relevant legal argument not previously considered by OWCP. Therefore, he is not entitled to a review of the merits based on the first and second above-noted requirements under section 10.606(b)(2).²²

Appellant also failed to submit any "relevant and pertinent new evidence" with his May 29, 2012 request for reconsideration. Other than the request itself, he did not submit additional documentation in support of his request for reconsideration. Because appellant did not provide any new evidence that might arguably impact the prior decision, he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).²³

¹⁹ 5 U.S.C. § 8128(a).

²⁰ 20 C.F.R. § 10.606(b)(2).

²¹ *Id.* at § 10.608(b).

²² *Id.* at § 10.606(b)(2)(1) and (2).

²³ *Id.* at § 10.606(b)(2)(3).

CONCLUSION

The record does not establish that appellant has an impairment of a scheduled member. Consequently, he is not entitled to a schedule award.²⁴ The Board also finds that OWCP properly denied appellant's May 29, 2012 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the June 5 and May 22, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 12, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

²⁴ Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in compensable permanent impairment or increased impairment.