



On April 4, 2003 appellant filed a claim for a schedule award, Form CA-7. By letter dated April 22, 2003, the Office requested that appellant's treating physician, Dr. M. Sean O'Brien, an osteopath specializing in orthopedic and hand surgery, provide an assessment of permanent impairment.

In a decision dated June 10, 2003, the Office denied appellant's claim for a schedule award on the grounds that the record did not contain any medical evidence regarding the degree of employment-related impairment.

Subsequent to the June 10, 2003 decision, the Office received a May 16, 2003 medical report from Dr. O'Brien detailing appellant's level of permanent impairment.

By letter dated September 7, 2003, appellant requested a review of his claim for a schedule award, asserting that all requested medical evidence had been provided. Appellant sent this letter to the Office claims director, the Office's Branch of Hearings and Review and the Employees' Compensation Appeals Board. Upon receipt of appellant's letter, the Office resumed development of his claim for a schedule award by sending Dr. O'Brien's May 16, 2003 report to an Office medical adviser for review and calculation of any permanent impairment. Upon receipt of appellant's letter to the Board, the instant appeal was docketed. At the time the appeal was docketed, the Office had not yet issued a new decision regarding appellant's entitlement to a schedule award.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act 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.<sup>1</sup> The Act, 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 Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>2</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides*, fifth edition (2001).<sup>3</sup>

### **ANALYSIS**

At the time of the Office's June 10, 2003 decision, appellant had not submitted any rationalized medical evidence which supports that, as a result of his employment injury, he sustained any permanent impairment to his right hand or fingers such that he would be entitled to a schedule award. The Board notes that, while the record did contain medical reports from Dr. O'Brien describing appellant's injury, care and progress, these reports neither assessed the

---

<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

degree of any permanent impairment nor provided a description of physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>4</sup> Therefore, the medical evidence is of little probative value in determining the extent of claimant's permanent impairment.<sup>5</sup> The Board notes that subsequent to the issuance of the Office's final decision, appellant submitted an additional medical report from Dr. O'Brien. However, the Board cannot consider this evidence as the Board's review is limited to the evidence that was before the Office at the time it issued its final decision.<sup>6</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish that he is entitled to a schedule award for impairment of his right hand as a result of his February 12, 2003 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 10, 2003 is affirmed.

Issued: December 9, 2003  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>4</sup> *James E. Archie*, 43 ECAB 180 (1991).

<sup>5</sup> The Board has held that a medical opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment. *Tracy Hines*, 47 ECAB 565 (1996).

<sup>6</sup> 20 C.F.R. § 501.2(c). See *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997); *Robert D. Clark*, 48 ECAB 422 (1997).