

negative impingement, no signs of deep vein thrombosis and an intact neurovascular examination. He released her from his care “with no impairment rating.” Dr. A.H. Manugian, a consulting orthopedic surgeon, examined appellant on November 7, 2008 and concluded: “According to the Fifth Edition, A[merican] M[edical] A[ssociation], *Guides [to the Evaluation of Permanent Impairment]*, I do not feel that she has any significant impairment.”

On February 9, 2009 the Office denied appellant’s schedule award claim. It found that the medical evidence did not support permanent impairment to a scheduled member or function of the body.

Appellant requested an oral hearing before an Office hearing representative. During a telephone hearing on June 24, 2009, his representative asked for the record to be held open for 30 days in order for appellant to obtain medical evidence to support her schedule award claim. No additional evidence was submitted.

In a decision dated September 1, 2009, the Office hearing representative affirmed the denial of appellant’s schedule award claim. She noted that, although appellant felt she was entitled to a schedule award because she could work only modified duty, schedule awards did not compensate injured employees for wage loss. Further, the hearing representative found no medical evidence to establish that appellant sustained any permanent impairment to a scheduled member.

Appellant argues on appeal that she did not receive notice of the telephone hearing. She noted that she would always have pain in her shoulder because she could not have surgery for the injury.

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.²

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.³ A person claiming compensation must show sufficient cause for the Office to proceed with processing and adjudicating a claim by submitting the essentials of a *prima facie* case.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.2.g., .3.a. (April 1993). See *Donald W. Wenzel*, 56 ECAB 390 (2005).

ANALYSIS

When appellant filed her schedule award claim, she assumed the burden of establishing that her December 13, 2007 employment injury caused permanent physical impairment to one of the scheduled members or functions of the body listed under Section 8107 of the Act and its regulations. The Office accepted her injury claim for the conditions of right shoulder strain and right knee contusion; therefore, her burden includes the necessity of submitting medical evidence showing that the accepted medical conditions caused permanent physical impairment to her right upper extremity or her right lower extremity.

Appellant submitted no such evidence. The medical evidence currently of record affirmatively indicates that she is not entitled to a schedule award. Dr. Azar, the attending orthopedic surgeon, conducted a completely normal examination of the right shoulder on September 25, 2008. He released appellant “with no impairment rating.” Dr. Manugian, the consulting orthopedic surgeon, also examined appellant. He reported that she had no significant impairment under the A.M.A., *Guides*.

With no medical evidence to support her claim of permanent physical impairment, appellant has not submitted a *prima facie* claim for a schedule award. The Board will therefore affirm the Office hearing representative’s September 1, 2009 decision.

Appellant argues on appeal that she did not receive notice of the telephone hearing but the record shows that the Office mailed her a properly addressed notice on May 28, 2009, so she is presumed to have received it.⁵ The Office also sent this notice to her representative, who did participate in the telephone hearing. Any question appellant might have regarding her representation is not before the Board. She noted that she will always have shoulder pain, but to receive a schedule award for her right upper extremity, she must submit an evaluation from her doctor showing that her employment injury has left her right upper extremity permanently impaired under the criteria of the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has not met her burden of proof. Appellant has not submitted evidence essential to establishing her schedule award claim.

⁵ *George F. Gidicsin*, 36 ECAB 175 (1984). See generally Annotation, *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4th 476, 481 (1986).

ORDER

IT IS HEREBY ORDERED THAT the September 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2010
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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