



On appeal appellant asserts that she is entitled to a schedule award because the accepted conditions are included in the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).<sup>2</sup>

### **FACTUAL HISTORY**

This case has previously been before the Board. In an October 6, 2008 decision, the Board found that appellant failed to meet her burden of proof to establish that she was unable to work eight hours a day beginning July 25, 2006 due to her September 25, 2005 employment injury.<sup>3</sup> By order dated January 27, 2010, the Board dismissed appellant's appeal for lack of jurisdiction because there was no final OWCP decision issued within one year of the appeal.<sup>4</sup> The law and facts of the previous Board decisions and orders are incorporated herein by reference.<sup>5</sup>

Appellant retired effective November 1, 2009. On June 17, 2010 she filed a schedule award claim and submitted a number of medical reports, including chiropractic notes, describing her physical condition.<sup>6</sup> In a September 26, 2009 report, Dr. Syed Naveed, a Board-certified neurologist, noted appellant's complaint of radiating neck pain and weakness. He performed electrodiagnostic testing and advised that the study was consistent with C4, C5 and C6 cervical radiculitis with superimposed median neuropathy in the same distribution.

On March 10, 2010 Dr. Neil Ghodadra, an OWCP medical adviser and orthopedic surgeon, stated that he had reviewed appellant's medical record and advised that under FECA, there was no entitlement to an impairment rating for the accepted conditions of postconcussion syndrome or panic disorder.

By decision dated May 28, 2010, OWCP denied appellant's schedule award claim on the grounds that the medical evidence did not support any permanent impairment to a scheduled member or function of the body under section 8107 or section 10.404 of the implementing regulations.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>3</sup> Docket No. 08-1217 (issued October 6, 2008).

<sup>4</sup> Docket No. 09-1458 (issued January 27, 2010).

<sup>5</sup> Appellant, then a 56-year-old mail processor, sustained an employment-related post-concussion syndrome and panic disorder without agoraphobia on September 25, 2005 when she was struck on the head by a shelf. She returned to four hours of modified duty on March 18, 2006, and to eight hours of modified duty on July 18, 2006. Appellant returned to a four-hour workday on July 25, 2006 and submitted claims for compensation for four hours a day.

<sup>6</sup> Appellant had previously filed a schedule award claim on February 9, 2006. By letter dated February 15, 2006, OWCP informed her that she was not entitled to a schedule award for the head because a schedule award was not payable for the loss or loss of use of any member of the body or function which was not specifically enumerated in section 8107 of FECA or its implementing regulations. By decision dated December 8, 2009, appellant's application for leave buyback for the period December 13, 2005 to March 8, 2006 was approved.

Appellant requested reconsideration on July 9, 2010 and submitted an impairment rating done in accordance with Chapter 14, Mental and Behavioral Disorders, of the sixth edition of the A.M.A., *Guides*. The report listed an impairment of 10 percent. The individual performing the impairment rating was not identified, and the report was not signed. A second unidentified report dated July 9, 2010 indicated that in accordance with Table 17-2, appellant had 30 percent impairment. By report dated August 8, 2010, Dr. Ghodadra reiterated that appellant was not entitled to a schedule award for the accepted conditions, and that these did not affect any extremity.

In a merit decision dated October 8, 2010, OWCP denied appellant's claim for a schedule award.

On October 12, 2010 appellant checked an OWCP appeal request form, indicating that she was requesting reconsideration with OWCP. She submitted an October 12, 2010 treatment note from Dr. David Olmstead, a Board-certified internist, who advised that appellant was being treated for headaches and dizziness due to postconcussion syndrome and was unable to work. An unidentified report dated October 12, 2010 advised that appellant's condition was unchanged since 2005 and that she had permanent residuals.

By decision dated December 15, 2010, OWCP denied appellant's reconsideration request on the grounds that the evidence submitted was irrelevant to her entitlement to a schedule award.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA,<sup>7</sup> and its implementing federal regulations,<sup>8</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. The specific members enumerated include the eye, arm, hand, fingers, leg, foot and toes. As to functions, FECA provides compensation for loss of hearing and loss of vision.<sup>9</sup> In addition, section 8107(c)(22) of FECA vests the Secretary of Labor with the authority to expand the list of scheduled members to include any other important external or internal organ of the body. Under the authority granted by section 8107(c)(22), the Secretary added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue as scheduled members or organs.<sup>10</sup>

No schedule award is payable for a member, function or organ of the body not specified under FECA or the implementing regulations.<sup>11</sup> FECA specifically provides that the brain, heart

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<sup>7</sup> 5 U.S.C. § 8107. This section enumerates members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid. Additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> 5 U.S.C. § 8107(c).

<sup>10</sup> 20 C.F.R. § 10.404(a).

<sup>11</sup> *D.K.*, Docket No. 10-174 (issued July 2, 2010).

and back are excluded under the term “organ.”<sup>12</sup> Neither FECA nor the regulations authorize payment of a schedule award for loss of cognitive function.<sup>13</sup> Moreover, a schedule award is not payable under section 8107 of FECA for an impairment of the whole person.<sup>14</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP’s medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP’s medical adviser providing rationale for the percentage of impairment specified.<sup>15</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly denied appellant’s schedule award claim as she failed to establish impairment to a scheduled member, function or organ of the body as specified by FECA or its implementing regulations.<sup>16</sup>

The accepted conditions in this case are postconcussion syndrome and panic disorder without agoraphobia. Appellant’s claim for a schedule award due to the accepted conditions does not relate to any of the scheduled members, functions or organs specified in FECA or OWCP’s regulations.<sup>17</sup> As noted above, FECA specifically provides that the brain is excluded under the term “organ.”<sup>18</sup> Thus, even though mental disorders are covered in the sixth edition of the A.M.A., *Guides*,<sup>19</sup> appellant would not be entitled to a schedule award for the accepted conditions as the brain is not a scheduled member or organ under FECA.

Moreover, OWCP has not accepted that appellant sustained a physical condition as a consequence of the September 25, 2005 employment injury, and she has not submitted competent medical evidence showing that she has impairment to a scheduled member. While she submitted several medical reports discussing impairments under Chapters 15 and 17 of the A.M.A., *Guides*, the reports were not identified or signed to indicate that they were prepared by a physician. Medical reports lacking proper identification cannot be considered as probative evidence in support of a claim.<sup>20</sup> Dr. Naveed identified impairment to appellant’s upper

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<sup>12</sup> 5 U.S.C. § 8101(19) (organ means a part of the body that performs a special function and for purposes of this subchapter, the brain, heart and back are excluded).

<sup>13</sup> *Brent A. Barnes*, 56 ECAB 336 (2005); *D.K.*, *supra* note 11.

<sup>14</sup> *D.J.*, 59 ECAB 620 (2008).

<sup>15</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010).

<sup>16</sup> *Supra* note 7.

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

<sup>18</sup> *Supra* note 12.

<sup>19</sup> A.M.A., *Guides*, *supra* note 2 at 347-82.

<sup>20</sup> *D.D.*, 57 ECAB 734 (2006).

extremities on electrodiagnostic testing consistent with cervical radiculitis. Neither FECA nor OWCP regulations provide for a schedule award for loss of use of the back.<sup>21</sup> The schedule award provisions of FECA include the extremities, and a claimant may be entitled to a schedule award for permanent impairment to an extremity, even though the cause of such impairment originates in the spine.<sup>22</sup> In the instant case, however, a cervical condition has not been accepted as employment related.

The Board finds that appellant did not establish that her accepted conditions of postconcussion syndrome and panic disorder would entitle her to a schedule award, and OWCP properly denied her schedule award claim.

Appellant may request a schedule award based on evidence resulting in permanent impairment to a scheduled member.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>23</sup> Section 10.608(a) of the Code of Federal Regulations provide that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>24</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>25</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>26</sup>

### **ANALYSIS -- ISSUE 2**

On October 12, 2010 appellant checked an appeal request form, indicating that she was requesting reconsideration. She raised no arguments. Appellant therefore did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Consequently, she was not entitled to a review

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<sup>21</sup> *J.Q.*, 59 ECAB 366 (2008).

<sup>22</sup> *Id.*

<sup>23</sup> 5 U.S.C. § 8128(a).

<sup>24</sup> 20 C.F.R. § 10.608(a).

<sup>25</sup> *Id.* at § 10.608(b)(1) and (2).

<sup>26</sup> *Id.* at § 10.608(b).

of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>27</sup>

With respect to the third above-noted requirement under section 10.6069b)(2), in his October 12, 2010 treatment note, Dr. Olmstead did not provide any findings with regard to an impairment rating that would entitle appellant to a schedule award, the merit issue in this case, and the unidentified report, which also did not contain an impairment rating, does not constitute competent medical evidence.<sup>28</sup>

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, OWCP properly denied her reconsideration request.<sup>29</sup>

### **CONCLUSION**

The Board finds that appellant did not establish that she was entitled to a schedule award for the accepted conditions of postconcussion syndrome and panic disorder without agoraphobia, and that OWCP properly refused to reopen her case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).<sup>30</sup>

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<sup>27</sup> *Id.* at § 10.606(b)(2).

<sup>28</sup> *D.D.*, *supra* note 20.

<sup>29</sup> *Supra* note 17.

<sup>30</sup> The Board notes that on May 15, 2009, March 10, April 12, May 5 and 25 and July 16, 2010, appellant requested that her claim for additional compensation subsequent to July 25, 2006 be reopened. As OWCP has not issued a final decision on these requests, the Board does not have jurisdiction over this issue. Its jurisdiction extends only to the review of final decisions by OWCP. 20 C.F.R. § 501.2(c); *E.L.*, 59 ECAB 405 (2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 15 and October 8, 2010 be affirmed.

Issued: October 7, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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