

FACTUAL HISTORY

On July 8, 2008 appellant, then a 54-year-old mail handler – equipment operator, filed an occupational disease claim alleging that on February 1, 2006 he first realized that his left hand pain was employment related. OWCP accepted the claim for bilateral carpal tunnel syndrome and left ulnar lesion and authorized left carpal tunnel surgery, which took place on May 20, 2009.³

On December 27, 2010⁴ appellant filed a claim for a schedule award.

By decision dated February 15, 2011, OWCP denied appellant's request for a schedule award as there was no medical evidence to establish that he sustained a permanent impairment.

On February 25, 2011 appellant requested reconsideration and submitted evidence in support of his request.

On July 9 and November 3, 2009 and January 19, 2010, Dr. Richard S. Levy, a treating Board-certified orthopedic surgeon, diagnosed right wrist carpal tunnel syndrome and left wrist carpal tunnel release in the July 9, 2009 report. Diagnoses included bilateral carpal tunnel release. A physical examination on July 9, 2010 revealed negative Phalen's and Tinel's signs in the left wrist and positive Phalen's and Tinel's sign in the right wrist. The physical findings from the November 3, 2009 and January 19, 2010 examinations revealed no motor or sensory deficits, good strength and range of motion in the left wrist. Right wrist mild atrophy was also noted as an orthopedic finding in the January 19, 2010 examination.

By decision dated March 11, 2011, OWCP denied modification of the February 15, 2011 decision. It found that appellant failed to submit any medical evidence that established permanent impairment of either arm.⁵

LEGAL PRECEDENT

The schedule award provision of FECA⁶ and its implementing regulations⁷ 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results

³ OWCP noted that it had accepted the conditions of right shoulder rotator cuff and right shoulder sprain as the result of a May 3, 2005 employment injury under OWCP File No. xxxxxx750.

⁴ Appellant's supervisor signed and submitted the form to OWCP on January 5, 2011.

⁵ The Board notes that, following the March 11, 2011 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003); *M.B.*, Docket No. 09-176 (issued September 23, 2009).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁸ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁹

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and left ulnar lesion. Appellant filed a claim for a schedule award on December 27, 2010. The issue to be resolved is whether he suffered any permanent impairment. The Board finds that appellant failed to provide any probative evidence supporting entitlement to schedule award for his left upper extremity as a result of his accepted employment injury.

OWCP received reports dated July 9 and November 3, 2009 and January 19, 2010 from Dr. Levy which showed a negative Phalen's and Tinel's signs, no motor or sensory deficits, good strength and range of motion for the left wrist. They showed mild atrophy and a positive Phalen's and Tinel's sign in the right wrist. Dr. Levy did not address the issue of employment-related impairment in any of his reports. The Board finds, therefore, that the reports of Dr. Levy are of diminished probative value and insufficient to establish appellant's entitlement to a schedule award.

Appellant has not submitted sufficient medical evidence to establish that, as a result of his employment injury, he sustained any permanent impairment to a scheduled member or function such that he would be entitled to a schedule award. OWCP procedures and the Board precedent require that the record contain a medical report with a detailed description of the impairment.¹⁰ This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹¹ Appellant has the burden of proof to submit the medical evidence necessary to

⁸ *Id.*

⁹ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

¹⁰ See *Peter C. Belkind*, 56 ECAB 580 (2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c)(1) (January 2010).

¹¹ See *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

support his claim of permanent impairment of a scheduled member or function of the body.¹² As such evidence has not been submitted OWCP properly denied his request for a schedule award.¹³

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 permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant failed to establish that he sustained any upper extremity impairment warranting a schedule award pursuant to 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 11, 2011 is affirmed.

Issued: March 6, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² See *D.H.*, 58 ECAB 358 (2007); *Tammy L. Meehan*, 53 ECAB 229 (2001); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

¹³ The Board notes that OWCP did not forward the case to the district medical adviser for review. OWCP's procedure manual provides that the claims examiner will ask the district medical adviser to evaluate cases when the case appears to be in posture for a schedule award determination. As the matter was deemed not to be in posture for a schedule award determination, OWCP was not required to seek review by the district medical adviser. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (January 2010).