

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

M.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Richmond, VA, Employer**

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**Docket No. 12-732
Issued: October 26, 2012**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 16, 2012 appellant filed a timely appeal from a January 9, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for 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 this case.²

ISSUE

The issue is whether appellant sustained permanent impairment of his lower extremity related to his accepted right knee injuries.

¹ 20 C.F.R. § 8101 *et seq.*

² The Board notes that, following the issuance of the January 9, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

OWCP accepted that appellant, then a 67-year-old mail handler, sustained a right knee sprain and medial meniscus tear while in the performance of duty on September 19, 2010. It authorized a knee brace.

On November 7, 2011 appellant filed a claim for a schedule award. He submitted no medical evidence with his request.

In a November 14, 2011 letter, OWCP notified appellant of the deficiencies of his schedule award claim and allotted 30 days for the submission of additional evidence. It requested a detailed description of any permanent impairment and a final impairment rating by an attending physician. Appellant did not respond.

By decision dated January 9, 2012, OWCP denied appellant's schedule award claim on the basis that no medical evidence established a ratable impairment to his right leg.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim, including that he or she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.³

The schedule award provision of FECA⁴ and its implementing regulations⁵ 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 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁷ It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent

³ See *R.B.*, Docket No. 11-636 (issued September 29, 2011). In *R.B.*, the employee claimed entitlement to a schedule award for permanent impairment of his right lower extremity. The Board determined that appellant did not establish that he had a permanent impairment caused by his accepted right knee strain and, therefore, it denied his claim for a schedule award for impairment to the right lower extremity.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.*

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

impairment, preexisting impairments of the body are to be included.⁸ A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.⁹

A schedule award is not payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.¹⁰ As neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.¹¹ However, as FECA makes provision for the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine, if the medical evidence establishes impairment as a result of the employment injury.¹²

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

ANALYSIS

The Board finds that appellant did not establish any permanent impairment to his right leg. OWCP accepted his claim for right knee sprain and medial meniscus tear. It requested that appellant submit medical evidence to establish that he sustained permanent impairment to his right leg due to the accepted right knee conditions.

By letter dated November 14, 2011, OWCP notified appellant of the deficiencies of his claim and requested additional evidence, including a detailed description of any permanent impairment and a final impairment rating. He did not respond. Appellant did not submit any medical evidence to establish that he sustained a permanent impairment due to his accepted injury. The Board finds that he is not entitled to a schedule award as a result of his employment-related right knee conditions.

⁸ See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (September 1995). This portion of OWCP procedure provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

⁹ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

¹⁰ See *Tania R. Keka*, 55 ECAB 354 (2004).

¹¹ See *id.* FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

¹² See *George E. Williams*, 44 ECAB 530 (1993). In 1966, amendments to FECA modified the schedule award provision to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.

¹³ See *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

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. Following issuance of the January 9, 2012 OWCP decision and on appeal, appellant submitted new evidence; but, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision.¹⁴

Appellant may submit this or other new evidence with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established any impairment related to his accepted right knee injuries and OWCP properly denied his claim for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁴ See 20 C.F.R. § 501.2(c)(1).