

related: left wrist sprain, left forearm osteoarthritis, left forearm articular cartilage disorder and left forearm joint derangement. On January 4, 2011 appellant underwent left wrist arthroscopic surgery. Dr. Anton Fakhouri, an attending Board-certified orthopedic surgeon, provided postoperative diagnoses that included triangular fibrocartilage complex (TFCC) tear. He indicated that a plate and screws were inserted. By letter dated June 30, 2011, the employing establishment reported that appellant returned to work on April 21, 2011.

In a report dated July 11, 2011, Dr. Fakhouri stated that appellant was doing well and had completed physical therapy. He stated:

“[Appellant] is essentially asymptomatic although over the weekend she had some discomfort over the ulnar aspect of the distal forearm at the level of the plate. The wrist itself looks well. Appellant has no pain with ulnar deviation. She has negative circumduction test. Appellant’s strength is up to par.”

Dr. Fakhouri stated that she could return to work without restrictions. He noted that appellant had retained hardware that may occasionally be uncomfortable.

On August 12, 2011 appellant submitted a claim (Form CA-7) for a schedule award. By letter dated August 22, 2011, OWCP advised her that she needed to submit medical evidence with respect to whether she sustained a permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A. *Guides*).

In a report dated September 12, 2011, Dr. Fakhouri stated that appellant was asymptomatic with respect to the left wrist. He provided results on examination regarding the left small finger, stating that she injured her finger on September 2, 2011 while working on containers. The record contains an October 11, 2011 telephone memorandum (Form CA-110), in which appellant reported that she had been unable to find a physician to provide an impairment rating and requested that a second opinion examination be scheduled. Appellant was told that it might take several months to schedule an examination.

OWCP requested that its medical adviser review the record and provide an opinion as to permanent impairment. In a report dated January 1, 2012, Dr. Sanjai Shukla, a medical adviser noted that Dr. Fakhouri had reported that appellant was essentially asymptomatic on July 11, 2011 and was asymptomatic as to the left wrist on September 12, 2011. He identified Table 15-3 of the A.M.A., *Guides* to find no impairment for a TFCC tear with no residual findings.

By decision dated January 5, 2012, OWCP determined that appellant was not entitled to a schedule award. It found the medical evidence was insufficient to establish any permanent impairment to her left wrist or arm.

Appellant requested a hearing before an OWCP hearing representative, which was held on April 11, 2012. At the hearing, she stated that OWCP’s claims examiner had told her that a second opinion examination would be scheduled.

By decision dated May 23, 2012, OWCP's hearing representative affirmed the January 5, 2012 decision. She found that the medical evidence did not establish any permanent impairment causally related to the October 17, 2010 injury.

LEGAL PRECEDENT

According to 5 U.S.C. § 8107, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

An employee seeking compensation for a permanent impairment under FECA has the burden of establishing that an employment injury caused or contributed to a permanent impairment of a scheduled member or function of the body.⁵ The medical evidence necessary to support a schedule award includes a physician's detailed report that provides a description of the impairment and properly applies the relevant portions of the A.M.A., *Guides*.⁶

ANALYSIS

Appellant has accepted left arm conditions and seeks a schedule award for permanent impairment to the left arm under 5 U.S.C. § 8107. To be entitled to a schedule award, she must submit probative medical evidence on the issue. While appellant asserted that Dr. Fakhouri did not provide impairment ratings, the Board notes that there must be a sufficiently detailed medical report from a physician with a proper description of permanent impairment. The medical evidence from Dr. Fakhouri dated July 11, 2011 provided only general statements that the left wrist was essentially asymptomatic, with some occasional discomfort due to the hardware inserted during the January 4, 2011 surgery. The September 12, 2011 report stated that the wrist was asymptomatic. No detailed description of any permanent impairment or reference to the A.M.A., *Guides* was provided.

OWCP referred the evidence to OWCP's medical adviser for review. In a January 1, 2012 report, Dr. Shukla identified Table 15-3 of the A.M.A., *Guides* as relevant to the accepted diagnosis. Under this table, a TFCC tear with "no residual findings: +/- surgical treatment"

² 5 U.S.C. § 8107. This section enumerates specific 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).

³ *A. George Lampo*, 45 ECAB 441 (1994).

⁴ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁵ *See A.B.*, Docket No. 12-1392 (issued January 24, 2013).

⁶ *See James E. Jenkins*, 39 ECAB 860 (1988); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(b) (January 2010).

results in no impairment.⁷ Dr. Shukla found that appellant had no employment-related permanent impairment based on the findings reported by Dr. Fekhour.

With respect to the reports from Dr. Fakhouri discussing a small left finger injury, the physician referred to a separate work incident on September 2, 2011. If appellant has a claim for injury on that date, it is not before the Board on this appeal. The issue is any permanent impairment causally related to the October 17, 2010 employment injury. The Board finds that the medical evidence presented does not establish a ratable permanent impairment in this case.

On appeal, appellant states that she believes OWCP's decision was unfair, as no impairment rating was performed and she still has a metal plate in her wrist that limits movement. She also raised the issue of a second opinion examination with OWCP. However, the determination of the need for an examination is a matter within the discretion of OWCP.⁸ The medical evidence currently of record does not establish permanent impairment, and OWCP referred the case for review by an OWCP medical adviser.⁹ The Board finds no abuse of discretion in declining to refer appellant for a second opinion examination.

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.¹⁰

CONCLUSION

The Board finds that appellant has not established a permanent impairment to a scheduled member or function of the body entitling her to a schedule award under 5 U.S.C. § 8107.

⁷ A.M.A., *Guides* 396, Table 15-3.

⁸ *Erwin L. Barnhart*, 33 ECAB 150 (1981). 5 U.S.C. § 8123(a) provides "an employee shall submit to examination by a medical officer of the United States or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may reasonably be required."

⁹ OWCP procedures indicate that medical evidence should be referred to an OWCP medical adviser for an opinion as to permanent impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010).

¹⁰ See *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 23, 2012 is affirmed.

Issued: April 12, 2013
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