

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

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**M.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Agawam, MA, Employer**

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**Docket No. 13-364  
Issued: April 5, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 3, 2012 appellant filed a timely appeal from a July 3, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has any permanent impairment causally related to his accepted right shoulder injury.

**FACTUAL HISTORY**

On July 14, 2009 appellant, then a 63-year-old mail carrier, filed an occupational claim (Form CA-2) alleging a right shoulder injury causally related to repetitive use in his federal

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

employment. OWCP accepted the claim for a right shoulder recurrent tear of the supraspinatus tendon.

Appellant submitted a claim for a recurrence of disability and submitted a report dated February 5, 2011 from Dr. Martin Lubner, a Board-certified orthopedic surgeon, who provided results on examination with respect to both shoulders and both knees. With respect to the right shoulder, Dr. Lubner diagnosed end-stage rotator cuff arthropathy. He indicated appellant had reached maximum medical improvement as to functional limitations and recommended a light-duty position. OWCP accepted a recurrence of disability commencing February 16, 2011.

On November 14, 2011 appellant submitted a Form CA-7 claim for a schedule award. By letter dated November 21, 2011, OWCP advised him to submit additional medical evidence with respect to a permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. On July 2, 2012 appellant submitted another CA-7 form indicating that he was claiming a schedule award.

By decision dated July 3, 2012, OWCP determined that appellant was not entitled to a schedule award. It found that no medical evidence addressed permanent impairment to the right upper extremity.

### **LEGAL PRECEDENT**

Section 8107 provides that, 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.<sup>2</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>3</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.<sup>4</sup>

An employee seeking compensation for a permanent impairment under FECA has the burden of establishing the essential elements of the claim, including that an employment injury contributed to a permanent impairment of a scheduled member or function of the body.<sup>5</sup> The medical evidence necessary to support a schedule award includes a physician's detailed report that provides a sufficient description of the impairment.<sup>6</sup>

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<sup>2</sup> 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).

<sup>3</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>4</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

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

<sup>6</sup> 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).

### ANALYSIS

Appellant filed a claim for a schedule award with respect to his accepted right shoulder injury; however, no medical evidence on the issue was received by OWCP prior to the July 3, 2012 final decision on appeal. Dr. Luber did not address whether appellant sustained permanent impairment to his right arm causally related to the accepted right shoulder injury. As noted, there must be probative medical evidence to support a schedule award under FECA. In the absence of any medical evidence that rates permanent impairment resulting from the accepted right shoulder injury, OWCP properly determined appellant was not entitled to a schedule award under 5 U.S.C. § 8107.

On appeal, appellant noted that he also had a left shoulder claim, and had seen Dr. Luber for evaluation. Appellant stated that Dr. Luber had submitted only evidence with respect to the left shoulder to OWCP, and on appeal he included a new report from Dr. Luber. The Board can review only evidence that was before OWCP at the time of the final decision on appeal.<sup>7</sup> Therefore the Board cannot consider the new evidence on this appeal. The issue of any left arm impairment has not been adjudicated by OWCP and is not an issue in this appeal.

Appellant may request a schedule award and submit probative medical evidence to OWCP with respect to an employment-related condition resulting in a permanent impairment to a scheduled member or function of the body.

### CONCLUSION

The Board finds the evidence does not establish a permanent impairment to a scheduled member of the body under 5 U.S.C. § 8107.

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<sup>7</sup> 20 C.F.R. § 501.2(c)(1). On appeal appellant also referred to another OWCP claim number ending in 310, which is a right knee claim and is not associated with the right shoulder claim on the current appeal.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 3, 2012 is affirmed.

Issued: April 5, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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