

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

C.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Las Vegas, NV, Employer)

**Docket No. 13-1792
Issued: April 11, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On July 25, 2013 appellant filed a timely appeal from a June 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the claim.

ISSUE

The issue is whether appellant has established entitlement to a schedule award due to her work-related injuries.

On appeal appellant argues that OWCP should refer her for an impairment evaluation as her physician does not perform impairment evaluations.

¹ 5 U.S.C. § 8101-8193.

FACTUAL HISTORY

On July 27, 2012 appellant, then a 65-year-old mail processing clerk, filed a traumatic injury claim for a left knee injury which occurred on July 26, 2012 during the performance of duty. OWCP accepted the claim for derangement of posterior horn of left medial meniscus and paid appropriate benefits, including a November 1, 2012 left knee arthroscopy. Appellant was working modified duty until she stopped work on November 1, 2012 for her left knee arthroscopy.

Medical records from the Centennial Hills Medical Center, dated November 1, 2012, relate that appellant underwent a left knee arthroscopy with partial medial meniscectomy, and a left knee arthroscopy with total synovectomy of all three compartments of the knee joint.

On April 12, 2013 appellant filed a Form CA-7 claim for a schedule award. In a March 22, 2013 report, Dr. Timothy J. Trainor, a Board-certified orthopedic surgeon, noted that appellant had been on light duty following her November 1, 2012 left knee arthroscopy. With regard to the left knee, physical examination findings revealed no joint line tenderness on palpation and a negative McMurray's examination. Appellant had full, pain-free range of motion in her knee with no varus or valgus instability and a negative Lachman's examination. Dr. Trainor indicated that appellant could return to full, unrestricted work duties beginning in April.

In an April 24, 2013 letter, OWCP requested that Dr. Trainor determine whether appellant reached maximum medical improvement with regard to her accepted conditions and to calculate an impairment determination under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On May 9, 2013 OWCP received Dr. Trainor's response to its questions on its April 24, 2013 letter. Dr. Trainor indicated that appellant reached maximum medical improvement on April 1, 2013. He advised that he does not perform impairment ratings and indicated that appellant had no impairment which preexisted the employment injury. A copy of appellant's March 22, 2013 examination was provided.

By decision dated June 24, 2013, OWCP denied appellant's schedule award claim on the basis of Dr. Trainor's reports that appellant had reached maximum medical improvement and she had no permanent impairment.

LEGAL PRECEDENT

FECA 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.² Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For

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).

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 of the A.M.A., *Guides*.⁴

It is the claimant's burden to establish that he or she has sustained a permanent impairment of the scheduled member or function of the body as a result of any employment injury.⁵ OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement), describes the impairment in sufficient detail so that it can be visualized on review and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁶

ANALYSIS

OWCP accepted that on July 26, 2012 appellant sustained a derangement of posterior horn of left medial meniscus and authorized left knee arthroscopy, which appellant underwent on November 1, 2012. It received hospital records which indicate that appellant underwent a partial meniscectomy and total synovectomy of the left knee on October 1, 2012. Appellant requested a schedule award. OWCP denied the schedule award claim, finding that her treating physician found no permanent impairment.

The evidence of record contains no medical opinion regarding any possible impairment due to the July 26, 2012 employment injury. Dr. Trainor, appellant's treating physician, indicated that appellant had reached maximum medical improvement. However, he specifically stated that he does not perform impairment evaluations and did not render an opinion on the degree of permanent impairment. Appellant did not otherwise submit a medical report which addressed whether she had permanent impairment of a scheduled body member causally related to her work injury along with an explanation of how any such impairment is determined pursuant to the A.M.A., *Guides*.⁷ Thus, there is no medical evidence which demonstrates that the July 26, 2012 employment injury caused a permanent impairment.

On appeal appellant argues that OWCP should refer her for an impairment evaluation as her physician does not perform impairment evaluations. It is appellant's burden to establish that she sustained a permanent impairment of the scheduled member or function as a result of the

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

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

⁵ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(b) (August 2002).

⁷ The record does indicate that appellant underwent a surgical procedure of the left knee on October 1, 2012 which is compensable under the A.M.A., *Guides*. See A.M.A., *Guides*, 509, Table 16-3, *Knee Regional Grid*.

employment injury.⁸ There is no medical evidence which demonstrates the July 26, 2012 employment injury caused a permanent impairment.

Appellant may request a schedule award or an increased schedule award based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to a schedule award for permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

⁸ See *Tammy L. Meehan*, *supra* note 5; *B.A.*, Docket No. 12-1135 (issued November 20, 2012).