

On November 15, 2012 appellant filed a claim for a schedule award. On April 1, 2013 OWCP advised her that it needed additional medical evidence, including a permanent partial impairment rating from her treating physician.

In an April 4, 2013 report, Dr. James P. Fitzgerald, a Board-certified orthopedic surgeon, noted that appellant was status post carpal tunnel release and was doing quite well. She still complained of some weakness in her right hand and occasional symptoms, but overall she was much better than she was prior to surgery. Findings on examination included essentially full range of motion, some decreased grip strength. Dr. Fitzgerald found that appellant had reached maximum medical improvement. Referring generally to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), Table 15-23, he found appellant had a two percent hand impairment.

In a decision dated May 2, 2013, OWCP denied appellant's schedule award claim on the grounds that it had received no further evidence since its April 1, 2013 development letter.

Appellant requested reconsideration and resubmitted Dr. Fitzgerald's impairment evaluation.

On June 5, 2013 Dr. Henry J. Magliato, an OWCP medical adviser, reviewed Dr. Fitzgerald's report. He found that Dr. Fitzgerald showed no calculations or grade modifiers to explain how he arrived at a two percent impairment for the right hand.

OWCP wrote to Dr. Fitzgerald on June 21, 2013. It provided him with a statement of accepted facts and requested that he explain how he rated appellant's impairment using the method on pages 448 and 449 of the sixth edition of the A.M.A., *Guides*, including all grade modifiers. Dr. Fitzgerald did not respond.

In a decision dated August 9, 2013, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It noted that Dr. Fitzgerald did not respond to its request for clarification.

On appeal, appellant stated that Dr. Fitzgerald did not understand the proper procedure in filling out the diagnosis.

LEGAL PRECEDENT

The schedule award provision of FECA² and the implementing regulations³ 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.⁴

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Linda R. Sherman*, 56 ECAB 127 (2004); *Daniel C. Goings*, 37 ECAB 781 (1986).

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. OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

ANALYSIS

To support her claim for a schedule award, appellant submitted an evaluation from Dr. Fitzgerald, her orthopedic surgeon, who found that she had a two percent impairment of her right hand, but he did not address how he arrived at this figure using Table 15-23, page 449 of the A.M.A., *Guides* entitled “Entrapment/Compression Neuropathy Impairment,” which gives impairment values for the upper extremity. OWCP wrote to him directly to ask for an explanation, but it received no response.

The burden is upon the employee to establish by evidence that she is entitled to compensation.⁷ As Dr. Fitzgerald did not explain how he used Table 15-23 to rate appellant’s impairment, the Board finds that she has not met her burden to establish permanent impairment. The Board will therefore affirm OWCP’s August 8, 2013 decision.

Appellant may submit new evidence or argument 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 met her burden to establish that she is entitled to a schedule award.

⁵ 20 C.F.R. § 10.404; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

⁷ *Harold Hendrix*, 1 ECAB 54 (1947).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board