

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

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A.T., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Washington, DC, Employer

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**Docket No. 13-1908  
Issued: May 23, 2014**

*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 16, 2013 appellant filed a timely appeal from the March 1 and April 15, 2013 merit decisions 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.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish that she has reached maximum medical improvement (MMI) regarding her accepted condition of bilateral carpal tunnel syndrome, warranting consideration of a schedule award pursuant to 5 U.S.C. § 8107; and (2) whether OWCP properly suspended appellant's compensation benefits effective April 7, 2013 due to her failure to submit a Form CA-1032 when requested.

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

## **FACTUAL HISTORY**

On June 17, 1998 appellant, then a 52-year-old distribution clerk, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome in the performance of duty. By decision dated October 9, 1998, OWCP accepted the claim for bilateral carpal tunnel syndrome and carpal tunnel release. Appellant underwent surgery for her condition on January 20 and June 16, 1999.

OWCP terminated appellant's wage-loss compensation on November 15, 2000. It noted that the medical evidence of record indicated that she was capable of performing the duties of her position as a distribution clerk, as she had returned to limited-duty work.

In an attending physician's report dated November 20, 2000, Dr. Hampton Jackson, a Board-certified orthopedic surgeon, noted that he advised appellant to return to light-duty work on November 17, 2000. He stated that it was undetermined at that time whether there were any permanent effects as a result of her condition.

Appellant requested a schedule award on March 6, 2001.

By report dated April 13, 2001, Dr. Jackson stated that appellant had reached MMI on that date. He recommended an impairment rating of 30 percent of her right and left upper extremities. Dr. Jackson noted that there was additional impairment of the right and left arms due to weakness, atrophy, pain or discomfort, which he rated bilaterally at 60 percent, stating that it was grade 2 and referring to Table 16-10 and Table 16-15 of the American Medical Association, *Guides to Evaluation of Permanent Impairment*, (A.M.A., *Guides*) fifth edition.

On June 15, 2001 OWCP informed appellant that the evidence of record was insufficient to support her claim for a schedule award. It stated that she should submit a detailed narrative medical report giving findings and an explanation as to how her permanent impairment resulted from her employment injury, as well as a completed impairment evaluation sheet.

Described in an impairment evaluation sheet dated July 13, 2001, Dr. Jackson noted that appellant had grade 2 sensory deficits or pain and using the A.M.A., *Guides*, fifth edition, he calculated a 25.4 percent bilateral upper extremity impairment. He stated that she had normal range of motion with both wrists. Dr. Jackson calculated appellant's bilateral impairment due to weakness or atrophy to be 30 percent. He asserted that her date of MMI was July 13, 2001. Dr. Jackson reiterated these results in a narrative report of the same date.

On November 5, 2001 OWCP forwarded appellant's case to a district medical adviser (DMA) to determine whether she had reached MMI; whether she was eligible for a schedule award; which part of her body was impaired; and the percentage of impairment. The DMA responded on November 7, 2001, noting that an updated electromyogram (EMG) nerve conduction velocity (NCV) from an independent examiner was required.

Dr. Jackson continued to submit progress reports regarding appellant's condition.

Dr. Salim Y. Mansoor, a physician of physical medicine and rehabilitation, reported on August 16, 2002 that he had performed an EMG/NCV test on appellant. He noted that there was no history of any specific injury: she had work-related numbness and tingling in her hands since

1993, which became worse in 1995. Dr. Mansoor diagnosed appellant with status-post decompression of the median nerve at the wrist bilaterally for carpal tunnel syndrome, with normal distal motor and sensory latencies for the median nerve at the wrist bilaterally.

By report dated December 31, 2002, Dr. Jackson noted that appellant had weakness and dysesthesias in her hands and that she had developed proximal radiation as well as distal radiation. On examination, he noted a positive Tinel's sign on the left and right. Dr. Jackson diagnosed appellant with classical residual carpal tunnel syndrome, greater on the left than the right and recommended that she see a hand surgeon for evaluation, followed by another EMG/NCV test. On May 23, 2003 Dr. Jackson noted that appellant had no progressive atrophy of the tendons, but that she was very weak both in pinch and grip. He noted progressing tenosynovitis and Dupuytren's fasciitis.

On October 17, 2003 a claims examiner documented a conversation she had with appellant regarding her schedule award, after appellant had arrived at the office with Dr. Jackson's July 13, 2001 evaluation of permanent impairment. The claims examiner explained to appellant that she could not receive a schedule award and regular compensation at the same time, advising her that she could elect the Office of Personnel Management (OPM) benefits, at which time OWCP could pay a schedule award. Appellant indicated that she did not want to process her schedule award at that time and that she had heard that the employing establishment would be reopening, so that she hoped to return to work. The claims examiner noted that her schedule award would remain pending on the file until appellant decided to pursue it.

By report dated March 3, 2006, Dr. Jackson stated that appellant had been back to work for five weeks and that her symptoms had worsened. He stated that she had tingling and dysesthesias in both hands. On examination, Dr. Jackson noted a positive Tinel's sign and a positive Phalen's test, but no worsening atrophy in either thenar eminence.

In a claim for compensation dated March 21, 2006, appellant requested a schedule award.

By letter dated April 6, 2006, OWCP requested that Dr. Jackson provide an assessment of appellant's permanent impairment, including the date of MMI.

On June 30, 2006 Dr. Jackson provided an assessment of appellant's permanent impairment. He stated that she had reached her MMI for bilateral carpal tunnel syndrome, but did not specify a date. Dr. Jackson calculated appellant's permanent impairment under the A.M.A., *Guides* at 38 percent bilaterally.

In a Form CA-110 dated December 12, 2006, a claims examiner noted that appellant's schedule award claim would be reviewed as soon as possible.

On August 30, 2007 Dr. Jackson stated that appellant's symptoms had worsened. Following appellant's physical examination he noted a very active positive Tinel's sign. Dr. Jackson treated appellant by blocking the median nerve of the left wrist. In a report dated September 27, 2007, Dr. Jackson noted improvement on the left carpal tunnel, but a positive Tinel's sign on the right carpal tunnel. He treated appellant by blocking the median nerve of the right wrist.

By report dated April 17, 2009, Dr. Jackson noted a positive Tinel's sign and weak pinch and grip. He stated that appellant's symptoms were stable. In a report dated November 18, 2009, Dr. Jackson noted increased symptoms and worsening of appellant's Tinel's signs.

On March 22, 2010 a claims examiner noted that appellant's schedule award claim would be reviewed as soon as possible.

In a report dated June 3, 2010, Dr. Jackson stated that appellant still had significant symptoms and that she complained of left elbow pain. He noted that there was tendinitis and epicondylitis related to her carpal tunnel syndrome.

Appellant filed a notice of recurrence of disability on November 18, 2010 in which she noted continuing pain in both arms and low back. On December 31, 2010 she filed a revised notice of recurrence in which she related that since November 18, 2010 she had been unable to perform her usual work duties because she had been sent home due to the National Reassessment Process.

In a supplemental rolls payment report dated January 4, 2011, OWCP noted that appellant was sent home by the employing establishment due to inability to accommodate her modified-duty assignment. It noted that it accepted her carpal tunnel syndrome recurrence effective November 18, 2010. The case record reflects that appellant received compensation benefits from November 20, 2010 until April 6, 2013.

On May 10, 2011 Dr. Jackson noted that appellant's symptoms remained, noting a strong Tinel's sign on the left and an unchanged Phalen's test. He stated that there was exacerbation of her carpal tunnel syndrome on the left. By report dated June 23, 2011, Dr. Jackson noted that appellant had a permanent nerve injury to her hands, making her incapable of gainful employment, because repeated use of her hands would increase her pain and aggravate her condition. He noted that there was no local Tinel's sign in the area of her surgical incisions.

In a work capacity evaluation sheet dated July 27, 2011, Dr. Jackson stated that appellant was permanently totally disabled from work. He checked a box indicating that MMI had not been reached. On October 20, 2011 Dr. Jackson noted that he had met with appellant's assigned nurse and that her condition was permanent. He related that it was improbable that she could return to full duties, but that he would send her to Dr. Ignacio for treatment by parenteral vitamin therapy. By report dated December 6, 2011, Dr. Jackson noted that appellant's condition remained stable. He stated that she did not want to have another surgery and explained to her that surgery could not reverse any nerve damage to her hands, but may prevent further worsening. Dr. Jackson found appellant fit for light duty, but noted that the employing establishment would not accommodate her.

On May 14, 2012 Dr. George H. Drakes, a Board-certified physician of physical medicine and rehabilitation, noted that appellant had carpal tunnel syndrome and scheduled an EMG/NCV of the upper extremities.

In a diagnostic report dated July 12, 2012, Dr. Ai Huong Phu stated his impression that the EMG/NCV testing revealed no evidence of carpal tunnel syndrome or peripheral neuropathy. The testing did reveal evidence of mild chronic C5 right radiculopathy.

By Form CA-1032 dated February 22, 2013, OWCP requested that appellant provide information regarding any employment for which she had received a salary in the last 15 months, any volunteer work she had performed in the same period, information about dependents, other federal benefits, payments, third-party settlements or fraud offenses.

OWCP denied appellant's claim for a schedule award by decision dated March 1, 2013. It found that she had not submitted evidence supporting a finding that her condition had reached MMI.

By decision dated April 15, 2013, OWCP suspended appellant's compensation. It noted that she had not replied to a CA-1032 form dated February 22, 2013.<sup>2</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>6</sup>

It is a well-settled rule that MMI arises at the point at which the injury has stabilized and will not improve further. This determination is factual in nature and depends primarily on the medical evidence.<sup>7</sup> The determination of MMI is not to be based on surmise or prediction of what may happen in the future.<sup>8</sup> A schedule award is appropriate where the physical condition of an injured member has stabilized, despite the possibility of an eventual change in the degree of functional impairment in the member.<sup>9</sup>

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<sup>2</sup> Appellant elected to receive benefits from OPM effective April 7, 2013 in lieu of compensation benefits under FECA.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>7</sup> *Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>8</sup> *See Delmer Jones*, 28 ECAB 39, 41 (1976).

<sup>9</sup> *See Santo Panzica*, 15 ECAB 458, 460-61 (1964).

### **ANALYSIS -- ISSUE 1**

On March 1, 2013 OWCP denied appellant's claim for a schedule award on the basis that she had not established that her condition had reached a fixed and permanent state. The Board affirms that the evidence of record does not establish MMI.

Appellant first requested a schedule award on March 6, 2001. On October 17, 2003 she indicated that she did not want to process her schedule award at that time, after being informed that she could not receive both regular compensation and a schedule award at the same time. However, in the interim period, appellant submitted reports from Dr. Jackson containing dates of MMI. In a report dated April 13, 2001, Dr. Jackson stated that she had reached MMI on that date. In an impairment evaluation sheet dated July 13, 2001, he asserted that this was the date of MMI. Appellant requested a schedule award again on March 21, 2006. By letter dated June 30, 2006, Dr. Jackson provided an assessment of her permanent impairment and stated that she had reached MMI. However, in a report dated July 27, 2011, he checked a box indicating that appellant had not reached MMI. Thus while Dr. Jackson in his earlier reports dating from 2001 to 2006 indicated that MMI had been reached, in a work capacity evaluation sheet dated July 27, 2011 he stated that she was permanently totally disabled from work, but checked a box indicating that MMI had not been reached. The most recent medical evidence received from him therefore did not support a finding of MMI. The other medical evidence of record, while substantiating a waxing and waning of appellant's condition, does not address the issue of MMI.

The Board concludes that OWCP properly determined that the medical evidence of record does not establish MMI.

### **LEGAL PRECEDENT -- ISSUE 2**

FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.<sup>10</sup>

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.<sup>11</sup> If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report.<sup>12</sup> At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.<sup>13</sup>

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<sup>10</sup> 5 U.S.C. § 8106(b).

<sup>11</sup> 20 C.F.R. § 10.528.

<sup>12</sup> See *N.G.*, Docket No. 12-981 (issued December 4, 2012); *Lucille A. Pettaway*, 55 ECAB 228, 232 (2004); *Demetrius Beverly*, 53 ECAB 305, 307 (2002).

<sup>13</sup> *Id.*

**ANALYSIS -- ISSUE 2**

OWCP requested that appellant submit a CA-1032 form with respect to any employment activity performed for the prior 15 months. It requested the information by letter dated February 22, 2013 and advised her to submit the form within 30 days or her compensation could be suspended. The record established that appellant did not respond prior to the April 15, 2013 decision.

Based on the evidence of record, the Board finds that OWCP properly suspended appellant's compensation effective April 15, 2013 pursuant to 20 C.F.R. § 10.528.

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 established that she reached MMI regarding her accepted condition of bilateral carpal tunnel syndrome, warranting consideration of a schedule award pursuant to 5 U.S.C. § 8107. The Board further finds that OWCP properly suspended her compensation for failure to submit a CA-1032 form when requested.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 15 and March 1, 2013 are affirmed.

Issued: May 23, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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