

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

E.S., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
FACILITY ENGINEERING COMMAND,
Jacksonville, FL, Employer**

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**Docket No. 14-1320
Issued: November 5, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2014 appellant filed a timely appeal from an April 16, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) pertaining to his schedule award. 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 this case.

ISSUE

The issue is whether appellant has established that he sustained more than 12 percent impairment to each of his lower extremities and more than 17 percent impairment to each of his upper extremities, for which he received a schedule award.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case was previously before the Board. By decision dated November 1, 2007, the Board affirmed OWCP's February 13, 2007 and November 28, 2008 decisions, which found there was insufficient medical evidence to support that appellant's claimed condition of manganese-induced Parkinson's disease was caused or aggravated by his federal employment and which denied his request for a hearing, respectively.² The facts and findings contained in the Board's prior decision are incorporated herein by reference. The facts germane to the present appeal are set forth herein.

Following the Board's decision dated November 1, 2007, appellant requested reconsideration. Subsequently, he submitted additional medical evidence which opined that he has neurologic symptoms secondary to manganese toxicity in the workplace. Following further medical development, OWCP accepted on December 15, 2008 the conditions of secondary Parkinson disease, essential and other specified forms of tremor and symptomatic torision dystonia.

On February 19, 2009 appellant filed a claim for a schedule award for permanent impairment resulting from the accepted conditions. By decision dated September 15, 2010, OWCP awarded him a schedule award for 12 percent right lower extremity impairment, 12 percent left lower extremity impairment, 17 percent right upper extremity impairment and 17 percent left upper extremity impairment.

On October 7, 2013 appellant filed a claim for an increased schedule award and a claim for a recurrence of disability commencing August 4, 2013. No additional medical evidence was submitted with his claims.

In an October 18, 2013 letter, OWCP advised appellant of the type of evidence needed to support his claim, to include an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) and a physician's narrative opinion regarding the diagnosed conditions and degree of impairment with a detailed description of all objective findings and subjective complaints. Appellant was allotted 30 days to submit the requested information.

In an October 28, 2013 letter, appellant advised that his previous treating physician was unable to provide the required medical report as he had not been seen since May 12, 2006. He stated that he was still taking medications prescribed by his physician and will continue to do so for the rest of his life. Appellant requested that OWCP send him to a second opinion specialist.

² Docket No. 07-1118 (issued November 1, 2007). On September 27, 2006 appellant, then a 57-year-old maintenance supervisor, filed an occupational disease claim alleging manganese-induced Parkinson's disease caused or aggravated by federal employment.

³ A.M.A., *Guides* (6th ed. 2008).

In an October 24, 2013 letter, Dr. Paul Nausieda, a Board-certified neurologist, advised that he saw appellant on December 16, 2005 and May 12, 2006, when he was diagnosed with Parkinson's disease due to chronic manganese exposure in his workplace.

By decision dated December 2, 2013, OWCP denied appellant's claim for an increased schedule award on the grounds that he submitted no medical evidence to support a permanent impairment to a scheduled member due to the accepted conditions.

On December 9, 2013 appellant requested a review of the written record. In a December 9, 2013 letter, he stated that he did sustain permanent impairment to a scheduled member due to his occupational disease in his workplace. Appellant further asserted that he has a slowly progressive disease process. He resubmitted copies of Dr. Nausieda's October 24, 2013 letter and his letter of October 28, 2013 requesting a second opinion examination.

In a February 22, 2006 report, previously of record, Dr. Nausieda noted appellant's occupational history of extensive fume exposure to internal pipe welding and exposure to fumes since 1974, his medical history and a review of diagnostic testing. He compared the examination findings of December 16, 2005 to an earlier 2002 examination and noted a slow progression of Parkinson disease features and neuropsychological abnormalities as appellant's left arm and head were now involved. Dr. Nausieda opined that appellant's symptoms were consistent with manganese-induced Parkinson disease and that the examination findings suggested a slowly progressive disease process.

By decision dated April 16, 2014, an OWCP hearing representative affirmed OWCP's December 2, 2013 decision on the grounds that appellant failed to provide sufficient evidence of his having sustained a greater degree of permanent impairment than previously provided.

On appeal, appellant contends that OWCP should send him for a second opinion examination.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations set forth the number weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body.⁴ 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.⁵

⁴ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁵ *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). For upper and lower extremity impairments, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁶ Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.⁷

OWCP procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss, except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.⁸

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he has an increased impairment due to the accepted conditions of secondary Parkinsonism, essential and other specified forms of tremor and symptomatic torision dystonia.

The record shows that OWCP paid appellant a schedule award for 12 percent right lower extremity impairment, 12 percent left lower extremity impairment, 17 percent right upper extremity impairment and 17 percent left upper extremity impairment due to the accepted conditions. As appellant filed a claim for an additional schedule award, he has the burden to establish more than 12 percent impairment to each lower extremity and more than 17 percent impairment to each upper extremity. It is his burden to submit sufficient evidence to establish the extent of permanent impairment.⁹

By letter dated October 18, 2013, OWCP informed appellant of the type of evidence needed to support his claim, including a physician's narrative opinion regarding the diagnosed conditions and degree of impairment with an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. The physician's report was to indicate whether appellant was at maximum medical improvement and was to include a detailed description of all objective findings and subjective complaints. Appellant did not submit the requested medical evidence, and on December 2, 2013 and April 16, 2014, OWCP denied his schedule award claim on the grounds that he submitted no medical evidence to support an increased permanent impairment to a scheduled member due to the accepted conditions.

⁶ R.Z., Docket No. 10-1915 (issued May 19, 2011).

⁷ J.W., Docket No. 11-289 (issued September 12, 2011).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(a)(2) (November 1998)

⁹ See *Annette M. Dent*, 44 ECAB 403 (1993).

In order to determine entitlement to a schedule award, appellant's physician must provide a sufficiently detailed description of appellant's condition so that the claims examiner and others reviewing the file are able to clearly visualize the impairment with its resulting restrictions and limitations.

Appellant submitted reports from Dr. Nausieda dated February 22, 2006 and October 24, 2013, which advised appellant has Parkinsonism due to chronic manganese exposure in his workplace and is a slowly progressive disease process. Dr. Nausieda, however, did not provide an updated or timely impairment rating. As he did not support that the accepted conditions caused any new permanent impairment, his reports are insufficient to establish that appellant has an increased impairment due to the accepted conditions.

Without probative medical opinion evidence from a physician addressing how appellant's accepted impairment increased, with findings correlated to the A.M.A., *Guides*, appellant has failed to establish his claim for an increased schedule award.¹⁰ Thus, there is no probative medical evidence to support a greater impairment than that awarded.

On appeal, appellant asserts that OWCP should send him for a second opinion examination. It need not further develop the medical evidence as he submitted no probative medical evidence to support a greater impairment than that previously awarded.

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.

CONCLUSION

The Board finds that appellant did not sustain greater than 12 percent impairment to each of his lower extremities and greater than 17 percent impairment to each of his upper extremities, for which he received a schedule award.

¹⁰ R.E., Docket No. 14-713 (issued June 26, 2014).

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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