

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

D.P., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL BASE
KITSAP, Bangor, WA, Employer**

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**Docket No. 14-1448
Issued: October 29, 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On June 9, 2014 appellant filed a timely appeal from the December 27, 2013 decision of the Office of Workers' Compensation Programs (OWCP), which denied an additional 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 to review the merits of this case.²

ISSUE

The issue is whether appellant has established entitlement to an additional schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

² OWCP denied a merit review of appellant's case on June 2, 2014, but it is not clear that she requested reconsideration. The record shows an appeal request form completed before OWCP's December 27, 2013 decision, not after. Further, appellant did not sign the form and the record shows no authorization of representation. Nonetheless, the Board has jurisdiction to review OWCP's December 27, 2013 decision and will review the merits of her case.

FACTUAL HISTORY

On January 10, 2007 appellant, a 50-year-old engineering technician, alleged a traumatic injury in the performance of duty when she slipped in an icy parking lot and fell. OWCP accepted her claim for right knee sprain, right knee contusion and right elbow contusion. In a February 2, 2009 decision, appellant received a schedule award for a 24 percent impairment of her right upper extremity.³

In 2013, appellant claimed an additional schedule award. In support thereof, she submitted an October 29, 2013 evaluation from Dr. Michael S. McManus, Board-certified in occupational medicine, who determined that appellant had a total right upper extremity impairment of 15 percent under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009).⁴

In a decision dated December 27, 2013, OWCP denied an additional schedule award. It explained that the medical evidence appellant submitted showed an impairment rating of only 15 percent and thus “does not support an increase in the impairment already compensated.”

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and the implementing regulations⁶ 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.⁷

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 A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁸ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁹

³ The award indicated that appellant previously received a schedule award for a five percent impairment of her right upper extremity under OWCP File No. xxxxxx774. OWCP therefore subtracted the 5 percent previously paid from her 24 percent total impairment of the right upper extremity, to result in a 19 percent total impairment.

⁴ Dr. McManus found a nine percent impairment due to post-traumatic osteoarthritis of the right elbow and a seven percent impairment based on ulnar neuropathy at the right elbow.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

⁸ *Supra* note 6; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

ANALYSIS

To support her claim that she was entitled to an additional schedule award, appellant submitted an October 29, 2013 impairment evaluation from Dr. McManus, a specialist in occupational medicine, who determined that she had a 15 percent total impairment of her right upper extremity.

The record shows, however, that appellant previously received schedule awards for a 24 percent total impairment of her right upper extremity. She received an award for a 5 percent impairment under another claim number and she received an award for an additional 19 percent under the present case. Evidence from Dr. McManus indicating that appellant currently has reduced impairment does not, on its face, support appellant's claim for additional compensation.

Appellant's 2009 schedule award provided 59.28 weeks of compensation, which expired on November 24, 2009. The fact that she continues to suffer from permanent physical impairment to her right upper extremity, whether that impairment is 15 percent or 19 percent or 24 percent, does not mean she is entitled to continuing schedule compensation. FECA strictly limits compensation for the total loss of an upper extremity, as with amputation at the shoulder, to 312 weeks.¹⁰ Once that compensation is paid, a claimant is entitled to no further schedule compensation for that extremity, despite the fact that the physical impairment is permanent and the claimant will have to live with it the rest of his or her life. Partial losses are compensated proportionately.¹¹ Thus, a 19 percent impairment of appellant's right upper extremity entitles her to 19 percent of 312 weeks of compensation or 59.28 weeks of compensation, which is what she received. Unless a physician offers an impairment rating that is higher than the 24 percent for which she has already received schedule compensation, she may not receive an additional schedule award.

Accordingly, the Board finds that OWCP properly denied an additional schedule award. The Board will affirm the December 27, 2013 decision. 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 has not established entitlement to an additional schedule award.

¹⁰ 5 U.S.C. § 8107(c)(1).

¹¹ *Id.* at § 8107(c)(19).

ORDER

IT IS HEREBY ORDERED THAT the December 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 29, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board