United States Department of Labor
Employees' Compensation Appeals Board

P.B., Appellant	)	
and	)	**Docket No. 14-1288**
	)	**Issued: September 16, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Palatine, IL, Employer	)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 15, 2014 appellant filed a timely appeal from a February 19, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her schedule award claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has established permanent impairment of the upper extremities causally related to her accepted conditions.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence following the February 19, 2014 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

FACTUAL HISTORY

On March 19, 2010 appellant, then a 62-year-old automation clerk, filed an occupational disease claim alleging that she experienced pain in both of her hands, arms and shoulders as a result of repetitively lifting, pushing, pulling and reaching in the performance of duty. She first became aware of her condition and realized it resulted from her employment on March 18, 2010. OWCP accepted her claim for bilateral carpal tunnel syndrome and bilateral complete rotator cuff rupture. Appellant worked modified duty. She stopped work on November 24, 2010 and received disability compensation. Appellant underwent authorized right and left shoulder surgeries. On March 9, 2011 she was placed on the periodic rolls. Appellant returned to full duty on October 23, 2012. She continued to submit medical and physical therapy reports regarding her treatment for her accepted conditions.

On September 25, 2013 appellant filed a claim for a schedule award.

By letter dated October 2, 2013, OWCP advised appellant of the evidence needed to support her schedule award claim. It requested that appellant submit a detailed report from a treating physician which provided an impairment evaluation pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] OWCP requested an opinion as to when appellant reached maximum medical improvement, a diagnosis upon which the impairment was based, a detailed description of objective findings upon which any impairment rating may be based, and a detailed description of any permanent impairment under the applicable criteria and tables in the A.M.A., *Guides.*

In a December 12, 2013 report, Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, related appellant's complaints of ongoing pain in both shoulders, hands and wrists. Upon examination, he observed crepitus with impingement in both shoulders and tenderness in the subacromial area on each side. Dr. Chmell reported that appellant's hands and wrists demonstrated diffuse swelling, tenderness and crepitus. Tinel's sign was positive at the median nerve bilaterally. Dr. Chmell diagnosed bilateral carpal tunnel syndrome and torn rotator cuff of both shoulders status post bilateral shoulder rotator cuff repair. He recommended that appellant follow up regularly with her primary care physician.

In a decision dated February 19, 2014, OWCP denied appellant's schedule award claim. It found that the medical evidence was insufficient to establish that she sustained a permanent impairment causally related to her accepted conditions.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations 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 of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of

[3] A.M.A., *Guides* (6th ed. 2008).

[4] 5 U.S.C. §§ 8101-8193.

OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as the appropriate standards for evaluating schedule losses.[5]

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.[6] An employee seeking a schedule award has the burden to establish a permanent impairment.[7] The A.M.A., *Guides* explain that impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized:

> "It is understood that an individual's condition is dynamic. Maximal medical improvement refers to a date from which further recovery or deterioration is not anticipated, although over time there may be some expected change. Once an impairment has reached [maximum medical improvement], a permanent impairment rating may be performed."[8]

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral complete rotator cuff rupture. Appellant filed a claim for a schedule award for permanent impairment of her upper extremities due to her accepted conditions.

The Board finds that appellant failed to submit sufficient medical evidence to establish maximum medical improvement or the extent of any permanent impairment. Appellant submitted the December 12, 2013 report from Dr. Chmell who noted appellant's complaints of ongoing pain in her shoulders, hands and wrists. Examination of both shoulders revealed crepitus with impingement in both shoulders and tenderness in the subacromial area on each side. Dr. Chmell also reported diffuse swelling, tenderness and crepitus in appellant's hands and wrists. Tinel's sign was positive at the median nerve bilaterally. Dr. Chmell diagnosed bilateral carpal tunnel syndrome and torn rotator cuff of both shoulders status post bilateral shoulder rotator cuff repair. He recommended that appellant follow up regularly with her primary care physician.

The Board finds that Dr. Chmell did not provide an impairment rating, discuss whether the accepted condition caused permanent impairment, or state an opinion as to whether appellant was at maximum medical improvement. In order to determine appellant's entitlement to a schedule award, she must provide a report from a treating physician with a sufficiently detailed description of her condition so the claims examiner and others reviewing the file will be able to

[5] 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[6] *Thomas P. Lavin*, 57 ECAB 353 (2006).

[7] *See Denise D. Cason*, 48 ECAB 530 (1997); *see also K.K.*, Docket No. 14-317 (issued July 11, 2014).

[8] A.M.A., *Guides*, Table 2-1 at page 20 (6th ed. 2009); *see also Orlando Vivens*, 42 ECAB 303 (1991) (a schedule award is not payable until maximum medical improvement -- meaning that the physical condition of the injured member of the body has stabilized and will not improve further -- has been reached).

clearly visualize the impairment with its resulting restrictions and limitations.[9] As Dr. Chmell did not opine that appellant's accepted conditions caused any permanent impairment, his report is insufficient to establish that appellant has any permanent impairment due to her accepted upper extremity conditions. Without probative medical opinion evidence from a physician explaining whether appellant sustained any permanent impairment as a result of her accepted conditions and how any impairment correlated with the A.M.A., *Guides*, appellant has failed to establish her claim for a schedule award.[10]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish permanent impairment of the upper extremities related to her accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2014 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] *Renee M. Straubinger,* 51 ECAB 667, 669 (2000) (the Board found that, when providing an impairment rating, a physician must provide a description of a claimant's impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment and its resulting restrictions and limitations).

[10] *D.R.*, 57 ECAB 720 (2006); *Lela M. Shaw*, 51 ECAB 372 (2000).