

performance of duty.² OWCP accepted the claim for an aggravation of spondylosis at C5-6 and left radial tunnel syndrome. Appellant underwent a left radial tunnel release. He returned to work as a modified mail handler in August 2001.

By decision dated April 8, 2002, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the left upper extremity.³ The period of the award ran for 31.20 weeks from August 16, 2001 to March 22, 2002. In a decision dated September 20, 2002, an OWCP hearing representative affirmed the April 8, 2002 decision. He further found that appellant was not entitled to a schedule award for disfigurement.

By decision dated March 6, 2008, OWCP granted appellant an award for an additional three percent left upper extremity impairment. The period of the award ran for 9.36 weeks from March 23 to May 27, 2002.

On March 28, 2014 appellant filed a claim for an additional schedule award. In letters dated April 4 and May 16, 2014, OWCP requested that he submit an impairment evaluation from his attending physician consistent with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). It informed appellant that it would schedule him for an evaluation if his physician was unable to provide the report and the medical evidence was not sufficient to determine the extent of his impairment.

On May 22, 2014 appellant requested that OWCP schedule a second opinion examination. He submitted an April 30, 2014 magnetic resonance imaging (MRI) scan study showing a postoperative fusion from C2 through C7, disc bulging and facet arthropathy at C2-3 and C7-T1, and central stenosis at C7-T1.

In a report of telephone call dated August 13, 2014, an OWCP claims examiner advised appellant that it had not received any medical evidence documenting that he received treatment for his neck condition after 2008.

By decision dated August 14, 2014, OWCP denied appellant's claim for an increased schedule award. It noted that he had not submitted an impairment evaluation. Before referring appellant for a second opinion examination to determine the extent of any impairment, OWCP requires current medical evidence regarding the employment-related condition that could be reviewed by another physician.

² The Board notes that OWCP advised appellant that the paper record associated with this file has been lost and reconstruction is not possible.

³ By decision dated June 1, 2004, OWCP denied appellant's claim for compensation from February 3 to April 20, 2004. In a decision dated January 20, 2005, it modified its June 1, 2004 decision to reflect that he had not established modification of an April 8, 2002 loss of wage-earning capacity determination. Appellant appealed to the Board. In an Order Remanding Case dated October 3, 2005, the Board determined that the record did not contain an April 8, 2002 wage-earning capacity determination and remanded the case for reconstruction of the case record. *Order Remanding Case*, Docket No. 05-744 (issued October 3, 2005). In a decision dated March 6, 2007, OWCP determined that appellant had not established a recurrence of disability beginning February 3, 2004. It concluded that it had erred in finding that there was a loss of wage-earning capacity determination in place dated April 8, 2002.

On appeal appellant related that he relocated, but OWCP delayed in transferring his case record to his new location. He indicated that he sent in current medical evidence from 2014. Appellant also argues that he should receive compensation for permanent disability and back pay beginning November 2004.

LEGAL PRECEDENT

The schedule award provision of FECA,⁴ and its implementing federal regulations,⁵ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

Where a claimant has previously received a schedule award and subsequently claims an additional schedule award due to a worsening of his or her condition, the claimant bears the burden of proof to establish a greater impairment causally related to the employment injury.⁸ OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred, describes the impairment in sufficient detail so that it can be visualized on review and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁹

ANALYSIS

OWCP accepted that appellant sustained an aggravation of spondylosis at C5-6 and left radial tunnel syndrome due to an October 1, 1998 employment injury. On August 8, 2002 it granted him a schedule award for a 10 percent left upper extremity impairment and on March 6, 2008 it granted him a schedule award for an additional 3 percent left upper extremity impairment.

On March 28, 2014 appellant requested an additional schedule award. OWCP informed him in letters dated April 4 and May 16, 2014 of the evidence necessary to establish his schedule

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ *Edward W. Spohr*, 54 ECAB 806 (2003).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(b) (February 2013).

award claim and specifically requested that he submit an impairment evaluation from an attending physician in accordance with the sixth edition of the A.M.A., *Guides*. Appellant did not, however, provide the requested information. He requested that OWCP refer him for a second opinion impairment evaluation. OWCP advised appellant, however, that he first needed to submit current medical evidence regarding his employment-related condition. Its procedures provide that, if a claimant fails to submit an impairment evaluation when requested, and the file does not contain medical evidence showing a permanent impairment, it may deny the award.¹⁰ Appellant did not submit such evidence and, thus, OWCP properly denied his schedule award claim.¹¹

On appeal appellant argues that he submitted medical evidence from 2014. He submitted an April 30, 2014 MRI scan study of the cervical spine. The MRI scan study, however, is diagnostic in nature and does not provide any impairment rating. Consequently, it is of little probative value on the issue of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.¹²

Appellant contends that OWCP delayed transferring his case after he relocated. He also argues that he is entitled to compensation for permanent disability and back pain beginning November 2004. The Board's jurisdiction, however, is limited to reviewing final adverse decisions of OWCP issued under FECA.¹³ OWCP has not issued a final decision on these issues within the Board's jurisdiction and thus these matters are not before the Board at this time.

On appeal appellant submitted additional evidence. The Board has no jurisdiction to review new evidence on appeal.¹⁴ 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 more than a 13 percent permanent impairment of the left upper extremity for which he received schedule awards.

¹⁰ *Id.* at Chapter 2.808.6(c) (February 2013); *see also A.T.*, Docket No. 14-880 (issued June 24, 2014).

¹¹ *See K.S.*, Docket No. 14-133 (issued April 1, 2014); *L.H.*, Docket No. 13-288 (issued May 8, 2013).

¹² *See G.S.*, Docket No. 13-1841 (issued February 3, 2014).

¹³ 20 C.F.R. §§ 501.2(c) and 501.3(a).

¹⁴ *See id.* at § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2015
Washington, DC

Patricia Howard Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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