

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

F.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-610
Issued: May 8, 2015**

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 H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 26, 2015 appellant filed a timely appeal from the December 4, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met her burden of proof to establish that she has permanent impairment entitling her to schedule award compensation.

FACTUAL HISTORY

On June 30, 2005 appellant, then a 43-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her neck and the back of her head due to performing her work duties over a period of time. OWCP accepted her claim for cervical and thoracic strains. It had previously accepted that she sustained a right shoulder sprain

¹ 5 U.S.C. §§ 8101-8193.

on March 7, 2003 due to pushing mail containers and lifting mail. Appellant also filed a separate claim for a traumatic injury in 2007, which was accepted for bilateral ankle sprains. Under that claim, she was released to return to full-duty work on February 14, 2008 with no additional need for medical care. The case file for appellant's occupational claim is the master file for all of her accepted injuries.

In May 2009, appellant filed a claim of recurrence noting that her employing establishment had withdrawn her limited-duty work. OWCP then began to pay total disability compensation.

In March 2012, OWCP referred appellant for vocational rehabilitation and a plan was developed for employment as an information clerk, receptionist, or customer complaint clerk. In February 2013, appellant informed OWCP that she had retired and was electing Office of Personnel Management benefits effective February 15, 2013.

On February 26, 2013 appellant filed a claim alleging that she was entitled to schedule award compensation due to her accepted injuries.

By letter dated March 18, 2013, OWCP advised appellant of the medical evidence necessary to establish her claim for a schedule award.

Appellant submitted a medical report dated December 19, 2005, in which Dr. Jin Xiao, an attending Board-certified occupational medicine physician, asserted that she sustained a permanent work-related aggravation of an underlying cervical disc disease due. Dr. Xian posited that she had five percent whole person impairment as a result of her cervical spine condition.

In a September 17, 2013 report, Dr. Richard Rogachefsky, a Board-certified orthopedic surgeon serving as an OWCP referral physician, posited that appellant did not have a ratable impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009). He indicated that the medical evidence did not show that she had any sensory or motor deficits to establish a permanent impairment under Table 15-20 of the sixth edition.

By report dated December 12, 2013, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, indicated that he had reviewed the medical evidence of record, including the opinion of Dr. Rogachefsky. Dr. Harris concurred that appellant did not have any ratable permanent impairment.

By decision dated February 6, 2014, OWCP denied appellant's schedule award claim because she did not submit sufficient medical evidence to establish her claim.

Appellant requested a hearing with an OWCP hearing representative. During the hearing held on September 16, 2014 she advised that she had neck and arm pain that interfered with her ability to use her right upper extremity. Appellant was asked if she ever had an electromyogram/nerve conduction velocity test to support any deficit and she responded that she had one for her ankles. She was advised that OWCP required additional medical evidence explaining the permanent impairment caused by her accepted medical conditions.

Appellant submitted a medical disability slip containing multiple diagnoses for her cervical spine and right arm. This medical evidence did not contain an impairment rating under the standards of the sixth edition of the A.M.A., *Guides*.

In a December 4, 2014 decision, the hearing representative affirmed OWCP's February 6, 2014 decision denying appellant's schedule award claim.²

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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.⁵ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁶ A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.⁷

ANALYSIS

In the present case, appellant did not submit sufficient medical evidence to establish that she has a permanent impairment of schedule member which would entitle her to schedule award compensation. She submitted a medical report from December 19, 2005 in which Dr. Xiao, an attending Board-certified occupational medicine physician, posited that she had a five percent whole person impairment as a result of her cervical spine condition. However, this report is of no probative value on the relevant issue of this case because a schedule award is not payable under section 8107 of FECA for an impairment of the whole person.⁸

Moreover, other medical evidence of record shows that appellant did not have a ratable permanent impairment under the sixth edition of A.M.A., *Guides*. In a September 17, 2013 report, Dr. Rogachefsky, a Board-certified orthopedic surgeon serving as an OWCP referral

² On December 12, 2014 OWCP issued a decision reducing appellant's entitlement to wage-loss compensation to reflect her ability to work in the constructed position of customer complaint clerk. Appellant did not appeal that decision.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (January 2010).

⁶ *Id.* at, Chapter 2.808.5a (February 2013).

⁷ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

⁸ *Id.*

physician, posited that she did not have a ratable impairment under the sixth edition of the A.M.A., *Guides*. He indicated that the medical evidence did not show that appellant had any sensory or motor deficits to establish a permanent impairment under Table 15-20 of the sixth edition. By report dated December 12, 2013, Dr. Harris, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, concurred that she did not have any ratable permanent impairment pursuant to the sixth edition of the A.M.A., *Guides*.

While appellant did discuss her accepted ankle injury with the hearing representative, no medical evidence was received supporting a permanent impairment due to that injury. Under the claim file for that injury, she was released to full duty on February 14, 2008 with no additional need for medical care.

For these reasons, appellant did not establish that she has permanent impairment entitling her to schedule award compensation and OWCP properly denied her schedule award claim. She may request a 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 meet her burden of proof to establish that she has permanent impairment entitling her to schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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