

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

M.W., Appellant

and

DEPARTMENT OF THE AIR FORCE,
MAXWELL AIR FORCE BASE, AL, Employer

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 16-1554
Issued: December 12, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 26, 2016 appellant filed a timely appeal from a June 30, 2016 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.²

ISSUE

The issue is whether appellant met her burden of proof to establish more than 30 percent permanent impairment of the left upper extremity for which she received a schedule award.

On appeal appellant asserts that she is entitled to a greater impairment, as shown by medical evidence contained in the record.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted evidence with her appeal to the Board. The Board cannot consider this evidence as its jurisdiction is limited to the evidence of record that was before OWCP at the time it issued its final decision. 20 C.F.R. § 501.2(c)(1); *P.W.*, Docket No. 12-1262 (issued December 5, 2012).

FACTUAL HISTORY

OWCP accepted that on May 4, 1983 appellant, then a 40-year-old clerk typist, sprained her left wrist, and that on July 29, 1983 she sustained left carpal tunnel syndrome and left thoracic outlet syndrome (brachial plexus lesions). The claims were combined, with the July 29, 1983 claim becoming the master file.³ Appellant had a left carpal tunnel release in August 1983 and thoracic outlet procedures in July 1988 and January 1989. She received total disability compensation from August 1983 until she returned to work in January 1990 as a medical clerk at the employing establishment mental health clinic.⁴ Appellant's position was abolished on April 5, 1991. She was returned to the periodic compensation rolls at that time. In 1994 appellant began treatment with Dr. Earl M. Simmons, a Board-certified surgeon, and other physicians at American Family Care in Montgomery, Alabama.

In a November 20, 2002 decision, OWCP reduced appellant's wage-loss compensation based on her capacity to earn wages as a hotel clerk, effective December 1, 2002. By utilizing the *Shadrick* formula,⁵ it found that appellant had 48 percent loss of wage-earning capacity.

Appellant filed a claim for a schedule award. A June 29, 2006 impairment evaluation was completed by Dave Bledsoe, an occupational therapist. Dr. Bledsoe opined that appellant had 39 percent left upper extremity permanent impairment due to loss of left shoulder motion and grade 3 sensory and motor deficits of the left upper extremity.

An OWCP medical adviser reviewed Dr. Bledsoe's report and noted that the therapist did not properly apply the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).⁶ He found that, in accordance with Figure 16-40, Figure 16-43, and Figure 16-46, appellant had 11 percent left arm impairment due to loss of left shoulder motion. The medical adviser found that, for grade 3 sensory and motor impairments, in accordance with Table 16-10, Table 16-11, and Table 16-15, appellant had a median nerve impairment of 12 percent and an ulnar nerve impairment of 10 percent. He combined the total 22 percent sensory and motor impairments with the 11 percent impairment for loss of shoulder motion, and concluded that appellant had a total of 30 percent permanent impairment of the left upper extremity.

By decision dated December 12, 2007, OWCP granted appellant a schedule award for 30 percent permanent impairment of the left arm. For the period of the schedule award, December 1, 2007 to September 16, 2009, appellant received compensation at the total disability rate. Thereafter, she was then placed back on the periodic rolls at the loss of wage-earning capacity rate for the constructive position of a hotel clerk where she remains to date.

³ The May 1983 claim was adjudicated by OWCP under File No. xxxxxx575, and the July 1983 claim under File No. xxxxxx901.

⁴ In a January 31, 1990 decision, OWCP reduced appellant's compensation based on her earnings as a medical clerk.

⁵ *Albert C. Shadrick*, 5 ECAB 376 (1953); see also 20 C.F.R. § 10.403.

⁶ A.M.A., *Guides* (5th ed. 2001).

On May 11, 2016 appellant filed a claim for an increased schedule award (Form CA-7). Along with her claim she submitted treatment notes dated January 19 and February 5, 2016 in which Dr. Jesse Austin, a family physician, described her complaints of chronic arm pain of over 30 years duration. Dr. Austin noted tenderness to palpation of the left shoulder and diagnosed chronic left upper arm pain secondary to thoracic outlet syndrome.⁷

By letter dated May 20, 2016, OWCP informed appellant that no medical evidence had been received to support an increase from the 30 percent permanent impairment for which she received a schedule award on December 12, 2007. It informed her that she should obtain an impairment evaluation in accordance with the sixth edition of the A.M.A., *Guides*.⁸ Appellant was given 30 days to obtain a report.

In form reports dated June 2 and 18, 2016, Dr. Austin recorded diagnoses of left arm pain and brachial plexus lesions. He prescribed medication.

By decision dated June 30, 2016, OWCP noted that appellant had not submitted medical evidence to establish increased impairment and denied her claim for an additional schedule award.

LEGAL PRECEDENT

It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of any employment injury.⁹

The schedule award provision of FECA¹⁰ and its implementing federal regulations¹¹ 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.¹² For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹³

⁷ These reports had previously been submitted to the record. Dr. Austin also provided similar reports dated January 19 to March 7, 2016.

⁸ A.M.A., *Guides* (6th ed. 2009).

⁹ See *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁰ 5 U.S.C. § 8107.

¹¹ 20 C.F.R. § 10.404.

¹² *Id.* at § 10.404(a).

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

ANALYSIS

The Board finds that appellant did not establish that she has greater than 30 percent permanent impairment of the left arm for which she received a schedule award. As noted, it is her burden to establish that she sustained an increase of impairment of a scheduled member or function as a result of any employment injury.¹⁴

On December 12, 2007 OWCP granted appellant a schedule award for 30 percent permanent impairment of the left upper extremity. On May 11, 2016 appellant filed a claim for an increased schedule award. Along with her claim she submitted treatment notes dated January 19 and February 5, 2016 from Dr. Austin. These treatment notes, however, did not rate permanent impairment under the sixth edition of the A.M.A., *Guides*. By letter dated May 20, 2016, OWCP informed appellant of the type of medical evidence needed to support her schedule award claim. Appellant submitted form reports from Dr. Austin that did not rate permanent impairment under the A.M.A., *Guides*.

OWCP procedures provide that, to support a schedule award, the record 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 (date of maximum medical improvement), describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability, and gives a percentage of impairment, based on a specific diagnosis, not the body as a whole, except for impairment to the lungs.¹⁵ If the claimant does not provide an impairment evaluation from his/her physician when requested, and there is no indication of permanent impairment in the medical evidence of file, the claims examiner may proceed with a formal denial of the award.¹⁶

The procedures described above outline the evidence needed to establish impairment. None of the medical reports submitted by appellant with the May 2016 claim for an increased schedule award provide an impairment rating for appellant's left upper extremity or describe impairment in any way. As the record does not contain a medical report supporting increased impairment, appellant did not meet her burden of proof to establish an increased schedule award. The Board finds the medical evidence submitted by appellant insufficient to establish entitlement to an increased schedule award.¹⁷

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.

¹⁴ See *supra* note 9.

¹⁵ *Supra* note 13 at Chapter 2.808.5.

¹⁶ *Id.* at Chapter 2.808.6c.

¹⁷ *Id.*; see *T.B.*, Docket No. 15-0889 (issued October 27, 2015).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish more than 30 percent permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board