

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, TEMPLE HILLS)
POST OFFICE, Temple Hills, MD, Employer)

**Docket No. 16-0060
Issued: February 2, 2016**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 13, 2015 appellant filed a timely appeal from an August 14, 2015 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 has met her burden of proof to establish permanent impairment to a scheduled member.

FACTUAL HISTORY

On December 9, 2005 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 21, 2005 she injured her right shoulder carrying a

¹ 5 U.S.C. § 8101 *et seq.*

heavy satchel. OWCP accepted the claim for a sprain of the right shoulder and upper arm, a sprain of the right rotator cuff, a right lipoma, and a right localized superficial mass or lump.

On September 18, 2007 appellant underwent repair of a torn right rotator cuff. She underwent a second shoulder surgery on March 9, 2009.

On December 19, 2014 appellant filed a claim for a schedule award (Form CA-1). By letter dated January 8, 2015, OWCP requested that she submit an impairment evaluation from her attending physician indicating whether she had reached maximum medical improvement and providing the extent of any permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). It allotted appellant 30 days to submit the requested medical evidence. Appellant did not respond within the time allotted.

By decision dated February 23, 2015, OWCP denied appellant's claim for a schedule award as she had failed to submit any medical evidence supporting a permanent impairment of a scheduled member or function.

In a March 3, 2015 duty status report, a physician found that appellant had reduced motion and pain, diagnosed right shoulder strain, and listed work restrictions. In a May 5, 2015 duty status report, a physician diagnosed right shoulder sprain and tendinitis and provided physical limitations.²

On May 18, 2015 appellant requested reconsideration.³ In an accompanying May 7, 2015 statement, she questioned the denial of her schedule award, noting that she carried mail for more than 20 years and sustained a work injury. Appellant submitted a February 3, 2015 magnetic resonance imaging (MRI) scan report of her right shoulder. The MRI scan report revealed severe osteoarthritis of the glenohumeral joint, loose bodies, and a full-thickness or near full-thickness tear in the supraspinatus tendon.

By decision dated August 14, 2015, OWCP denied modification of its February 23, 2015 decision. It found that appellant had not submitted an impairment evaluation in support of her claim.

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 an employee sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However,

² The names of the physicians are not legible.

³ Appellant listed two OWCP file numbers on her request for reconsideration. However, OWCP considered the evidence from the current file number xxxxxx054.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

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

Appellant has the burden under FECA to establish that she sustained a permanent impairment of a scheduled member or function as a result of her employment injury entitling her to a schedule award.⁸ Before the A.M.A., *Guides* can be utilized a description of impairment must be obtained from her physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decrease in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁹

ANALYSIS

OWCP accepted that appellant sustained a sprain of the right shoulder and upper arm, a sprain of the right rotator cuff, a right lipoma, and a right localized superficial mass or lump due to a November 21, 2005 employment injury. Appellant had surgery to repair a torn right rotator cuff on September 18, 2007, and a subsequent shoulder surgery on March 9, 2009.

On December 19, 2014 appellant filed a claim for a schedule award, but did not submit an impairment evaluation or other medical evidence establishing permanent impairment. She has the burden of proof to submit medical evidence supporting that she has a permanent impairment of a scheduled member or function of the body.¹⁰ Appellant provided 2015 duty status reports finding that she had work limitations and a right shoulder MRI scan report. Neither the duty status reports nor the MRI scan report addressed the relevant issue of whether she has a permanent impairment of the right upper extremity. As noted, appellant must submit an evaluation of an attending physician that includes a description of impairment that is in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹¹ Moreover, as the

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 *See D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

⁹ *D.M.*, Docket No. 11-775 (issued October 11, 2011); *Peter C. Belkind*, 56 ECAB 580 (2005).

¹⁰ *See A.C.*, Docket No. 13-1408 (issued November 15, 2013); *D.H.*, *supra* note 8.

¹¹ *See supra* note 9.

authors of the duty status reports cannot be identified as physicians, they do not constitute competent medical evidence and are of no probative value.¹²

Appellant failed to provide probative medical evidence establishing a permanent impairment due to her accepted right shoulder condition and thus has not met her burden of proof.¹³

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 met her burden of proof to establish permanent impairment of a scheduled member.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² See *I.M.*, Docket No. 15-1318 (issued December 10, 2015); *Merton J. Sills*, 39 ECAB 572 (1988).

¹³ See *P.L.*, Docket No. 13-1592 (issued January 7, 2014).