



right shoulder, the more that he used the shoulder. Appellant stopped work on July 24, 2014. OWCP accepted his claim for right shoulder impingement.

On August 25, 2014 appellant returned to full duty. On November 28, 2014 he stopped work again and requested disability compensation.

In a decision dated February 25, 2015, OWCP denied appellant's claim for disability beginning December 8, 2014.

On January 2, 2015 appellant returned to part-time light duty working two hours per day. OWCP paid compensation for six hours of wage loss per day.

In a May 22, 2015 work capacity evaluation form, Dr. Keith A. Dismuke, a Board-certified family practitioner, noted that appellant's claim was accepted for right shoulder impingement. He checked "No" that appellant was not capable of working his usual job. Dr. Dismuke indicated that appellant could work with restrictions.

On June 2, 2015 OWCP received appellant's request for schedule award (Form CA-7).

In a letter dated June 3, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his schedule award claim. It requested that he provide a medical report from his treating physician addressing whether he reached maximum medical improvement (MMI) and whether his accepted conditions caused permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On July 7, 2015 OWCP referred appellant, along with a statement of accepted facts and the medical record to Dr. Richard R. Harris, a Board-certified orthopedic surgeon and second-opinion examiner, to determine the nature of appellant's condition and extent of disability. Dr. Harris was not requested to provide an evaluation of appellant's permanent impairment. In an August 3, 2015 report, he reviewed the statement of accepted facts and noted that appellant's claim was accepted for right shoulder impingement. Dr. Harris opined that appellant's right shoulder impingement had not resolved and that he continued to suffer residuals of his accepted condition. He explained that objective findings showed that appellant's condition persisted as there was pain with range of motion, tenderness of the acromioclavicular (AC) joint shoulder, crepitus with right shoulder range of motion, decreased strength in the right hand, and particular pain with abduction at 90 degrees and flexion and extension. Dr. Harris indicated that appellant could not return to his date-of-injury position or work in a full-duty capacity, but that he could work sedentary to light duty eight hours a day. He recommended that appellant be reevaluated by an orthopedic surgeon and have a magnetic resonance imaging (MRI) scan examination of the right shoulder to further evaluate the details of the impingement syndrome. Dr. Harris did not offer an opinion regarding appellant's entitlement to a schedule award.

In a decision dated September 15, 2015, OWCP denied appellant's claim for a schedule award. It found that the medical evidence failed to establish that he sustained a permanent impairment to his right upper extremity as a result of his accepted condition.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>2</sup> 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 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.<sup>3</sup>

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.<sup>4</sup> It is the claimant's burden to establish that he has sustained a permanent impairment of the scheduled member or function as a result of any employment injury.<sup>5</sup> Before an award may be made, it must be medically determined that no further improvement can be anticipated and the impairment must reach a fixed and permanent state, which is known as MMI.<sup>6</sup> OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which 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*.<sup>7</sup>

## ANALYSIS

OWCP accepted that appellant sustained right shoulder impingement in the performance of duty as a result of his duties as a rural carrier. Appellant stopped work and returned to part-time modified duty. On June 2, 2015 OWCP received appellant's claim for a schedule award.

The only contemporaneous medical evidence that appellant submitted along with his claim for a schedule award was a May 22, 2015 work capacity evaluation form by Dr. Dismuke. Dr. Dismuke indicated that appellant's claim was accepted for right shoulder impingement. He checked "no" that appellant was not capable of working his usual job but indicated that appellant could work with restrictions. Although Dr. Dismuke noted that appellant had an accepted right shoulder condition, he did not address whether appellant sustained a permanent impairment as a result of his accepted condition nor opine on whether appellant was at MMI. In order to be entitled to a schedule award, a claimant must establish that he is at MMI and sustained a

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<sup>2</sup> *Id.*

<sup>3</sup> 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>4</sup> *Thomas P. Lavin*, 57 ECAB 353 (2006).

<sup>5</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(1) (January 2010).

<sup>7</sup> *Id.* at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7 (February 2013).

permanent impairment of a scheduled member of the body due to an employment injury.<sup>8</sup> It is appellant's burden to submit sufficient evidence to establish the extent of permanent impairment.<sup>9</sup> As appellant did not submit any probative medical opinion evidence from a physician addressing how appellant's impairment correlated to the appropriate edition of the A.M.A., *Guides* and explaining the causal relationship between these findings and his permanent impairment, the Board finds that appellant did not meet his burden of proof to establish his entitlement to a schedule award.

While the record also contains a second opinion report from Dr. Harris dated August 3, 2015, the referral was made to determine appellant's disability status. Dr. Harris was not requested to evaluate appellant to determine whether appellant had a permanent impairment pursuant to the A.M.A., *Guides*. He therefore offered no opinion in that regard.

Appellant may request a schedule award based on 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 that he sustained a permanent impairment to his right upper extremity causally related to his employment condition.

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<sup>8</sup> *R.E.*, Docket No. 14-713 (issued June 26, 2014); *D.R.*, 57 ECAB 720 (2006).

<sup>9</sup> See *Annette M. Dent*, 44 ECAB 403 (1993). *C.C.*, Docket No. 13-1399 (issued April 24, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 15, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 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