

and another employee was pushing a wet vac machine over a hump. He stopped work on June 5, 2013. OWCP accepted the claim for left biceps tendon rupture and authorized left biceps tendon rupture repair surgery, which occurred on August 2, 2013. In an October 2, 2013 letter, it informed appellant that he would receive compensation benefits on the periodic rolls for temporary total disability with a regular payment commencing September 22, 2013. OWCP subsequently expanded acceptance of the claim to include left shoulder and arm open wound, left carpal tunnel syndrome. It authorized left arm wound surgery, which occurred on October 10 and 24, 2013, and left carpal tunnel surgery, which occurred on August 25, 2014. Appellant returned to a temporary modified job on September 22, 2015 and retired from the employing establishment on November 27, 2015.

On February 13, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated February 22, 2016, OWCP informed appellant that the evidence of record was insufficient to establish a schedule award. It informed him of the medical evidence required, which included a physician's permanent impairment rating based upon the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In response to OWCP's development letter, appellant submitted a February 10, 2016 impairment rating from Dr. Stephen Dawkins, a treating physician Board-certified in occupational medicine. Using Table 15-21, page 437, Dr. Dawkins assigned a class 3 or 44 percent left upper extremity impairment for appellant's cubital tunnel syndrome. He assigned a grade modifier of 3 using Table 15-23, page 449 for a nine percent permanent impairment due to right carpal tunnel syndrome, and using Table 15-18, page 429, Dr. Dawkins assigned a four percent permanent impairment for severe ulnar palmar nerve damage. Using the conversion table at page 420, he determined that 44 percent upper extremity impairment converted to 26 percent whole person impairment, that 9 percent upper extremity impairment converted to 5 percent whole person impairment, and that 4 percent upper extremity impairment converted to 2 percent whole person impairment. Dr. Dawkins then combined the whole person impairment ratings to find a 31 percent left upper extremity whole person impairment using the sixth edition of the A.M.A., *Guides*. No date of maximum medical improvement was given in the report.

By letter dated March 18, 2016, OWCP informed Dr. Dawkins that FECA had no provision for whole person impairment ratings and that he had failed to provide the date for maximum medical improvement. It informed him of the accepted conditions, that a date of maximum medical improvement was required, and that the rating should be based on the sixth edition of the A.M.A., *Guides*.

In response to OWCP's March 18, 2016 letter, it received March 7 and April 1, 2016 impairment ratings from Dr. Dawkins which were unchanged from his prior impairment rating.

By decision dated April 22, 2016, OWCP denied appellant's schedule award claim on the basis that the requirements had not been met for entitlement to a schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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.⁴ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁵

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

It is the claimant's burden to establish that he sustained a permanent impairment of a scheduled member or function as a result of an employment injury.⁷ OWCP procedures provide that to support a schedule award the file must contain competent medical evidence showing that the impairment has reached a permanent and fixed state and indicates the date on which this occurred.⁸ It is a well-settled rule that maximum medical improvement arises at the point at which the injury has stabilized and will not improve further. This determination is factual in nature and depends primarily on the medical evidence.⁹

ANALYSIS

OWCP accepted the claim for left biceps tendon rupture, left shoulder and arm open wound, and left carpal tunnel syndrome. It authorized left biceps tendon rupture repair surgery,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁶ A.M.A., *Guides* 494-531.

⁷ *Tammy L. Meehan*, 53 ECAB 130 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(b) (February 2013).

⁹ *Peter C. Belkind*, 56 ECAB 580 (2005).

which occurred on August 2, 2013, left full-thickness wound surgery, which occurred on October 10 and 24, 2013, and left carpal tunnel surgery, which occurred on August 25, 2014.

Appellant filed a claim for a schedule award on February 16, 2016. As noted above, in order to support a schedule award, the file must contain competent medical evidence establishing that appellant has reached maximum medical improvement and the date this occurred, describing the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability, and providing a percentage of impairment based on a specific diagnosis.¹⁰ If a claimant requests a schedule award, but has not submitted such evidence, the claimant should be requested to submit it.¹¹

The only evidence appellant submitted in support of his schedule award claim were patient visit reports dated February 10, March 7, and April 1, 2016, and impairment ratings and April 15, 2016 notations by Dr. Dawkins opining that appellant had a 31 percent whole person left upper extremity impairment. No date for maximum medical improvement was given in the February 10, 2016 report.

In a letter dated March 18, 2016, OWCP advised Dr. Dawkins regarding the requirements for impairment ratings under FECA which included providing a date of maximum medical improvement. Its procedures require the medical evidence establish that an employment-related condition has stabilized and will not improve further. It is only when an impairment has reached maximum medical improvement that an impairment rating may be performed.¹² As there record contains no evidence that appellant has reached maximum medical improvement, the Board finds that consideration of a schedule award is premature.¹³ OWCP properly determined that appellant was not entitled to a schedule award.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he is entitled to a schedule award for his accepted employment conditions.

¹⁰ *Supra* note 8 at Chapter 2.808.5(b) (February 2013).

¹¹ *Id.* at Chapter 2.808.6(a).

¹² *Patricia J. Penny-Guzman*, 55 ECAB 757 (2004).

¹³ *See M.H.*, Docket No. 09-1888 (issued July 6, 2010).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 22, 2016 is affirmed.

Issued: November 14, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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