

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Islandia, NY, Employer**

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**Docket No. 16-1050
Issued: October 5, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 22, 2016 appellant filed a timely appeal of a March 25, 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 has established permanent impairment to a scheduled member of her body causally related to her accepted right shoulder condition, thereby entitling her to a schedule award under 5 U.S.C. § 8107.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence with his appeal to the Board and that OWCP received additional evidence following the March 25, 2016 decision. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. Thus, it is precluded from reviewing this additional evidence on appeal. *See* 20 C.F.R. § 501.2(c)(1); *M.W.*, Docket No. 15-0949 (issued October 8, 2015).

FACTUAL HISTORY

Appellant, a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she felt a pop in her right shoulder on November 14, 2008 while pulling on a hook. OWCP accepted the claim for right shoulder sprain. The record reflects that appellant received supplemental and periodic rolls compensation benefits from January 5 through March 14, 2009.

On January 13, 2010 appellant underwent arthroscopic surgery to ameliorate chronic right acromioclavicular joint pain in her right shoulder. The procedure, which was performed by Dr. Jeffrey Meyer, Board-certified in orthopedic surgery, entailed an arthroscopic acromioplasty and distal clavicle resection. Appellant was returned to the periodic rolls on January 13, 2010.

In an October 13, 2014 report, Dr. Meyer stated that appellant was experiencing right biceps tendinosis, status/post prior right distal clavicle resection. He reported that she had ongoing anterior shoulder discomfort, increased by repetitive forward use of the arm. Dr. Meyer asserted that appellant had the following conditions: disorders of bursae and tendons in the right shoulder region, other synovitis and tenosynovitis, pain in the right shoulder joint; and bicipital tenosynovitis.

Appellant returned to work at the employing establishment as a modified mail handler on December 2, 2014.

As of May 31, 2015 appellant received compensation benefits based upon her loss of wage-earning capacity.

On February 1, 2016 appellant filed a claim for a schedule award (Form CA-7) based on a partial loss of use of her right upper extremity.

By letter dated February 24, 2016, OWCP informed appellant that it required additional medical evidence to determine whether she was entitled to a schedule award for her accepted right upper extremity. It specifically requested that she have her treating physician submit a medical report containing an impairment rating rendered pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). OWCP requested that appellant submit the additional evidence within 30 days. Appellant did not submit any medical evidence.

By decision dated March 25, 2016, OWCP found that appellant had no ratable impairment causally related to her accepted right shoulder condition because the medical evidence did not demonstrate a measurable impairment, and, therefore, she was not entitled to a schedule award.

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

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

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 Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).⁶ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁷

ANALYSIS

OWCP accepted that appellant sustained right shoulder sprain on November 15, 2008 causally related to the accepted employment incident. On February 1, 2016 appellant requested a schedule award and OWCP requested that she submit a medical report containing an impairment rating rendered in conformance with the applicable tables and protocols of the sixth edition of the A.M.A., *Guides*. She, however, did not respond to this request.

Under OWCP procedures, medical evidence to support a schedule award should include a report that shows a claimant has reached a date of MMI, that describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of permanent impairment and that calculates a percentage of impairment pursuant to the A.M.A., *Guides*.⁸

Without the necessary medical opinion evidence establishing the extent of appellant's impairment and explanation of the causal relationship between the impairment findings and the accepted employment injury, appellant has failed to establish permanent impairment of a scheduled member causally related to her accepted injury.⁹

As appellant failed to provide an impairment rating rendered in accordance with the applicable protocols and tables of the A.M.A., *Guides*, OWCP properly found that she had no ratable impairment attributable to her accepted right shoulder condition and that therefore there was no basis for a schedule award under the A.M.A., *Guides*. She did not meet her burden of proof to establish a compensable permanent impairment.¹⁰ Accordingly, the Board will affirm the March 25, 2016 OWCP decision.

⁵ *Id.*

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); and Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(b) (February 2013); *V.P.*, Docket No. 16-0702 (issued July 15, 2016).

⁹ See *N.D.*, Docket No. 16-0573 (issued May 17, 2016).

¹⁰ *T.P.*, Docket No. 15-1399 (issued July 22, 2016).

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 established permanent impairment to a scheduled member of her body causally related to her accepted right shoulder condition, thereby entitling her to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 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