

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

I.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Juan, PR, Employer**

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**Docket No. 16-1796
Issued: January 13, 2017**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 9, 2016 appellant filed a timely appeal of a June 6, 2016 merit decision and an August 11, 2016 nonmerit 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 to consider the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for an oral hearing as untimely; and (2) whether appellant has met her burden of proof to establish permanent impairment of a scheduled member.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 14, 2014 appellant, then a 68-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on October 10, 2014 she sustained severe trauma to one of her fingers when it was caught in a machine.

The employing establishment provided appellant with an authorization for treatment (Form CA-16) and appellant's physician completed the reverse side on October 14, 2014 noting that appellant had sustained a partial amputation of her right ring finger.

In a letter dated October 30, 2014, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal lost time from work and that payment of a limited amount of medical expenses was administratively approved. It reopened her claim to formally consider the merits of her claim and requested additional factual and medical evidence. OWCP afforded appellant 30 days to respond.

On December 1, 2014 OWCP accepted appellant's claim for open fracture of her right phalanx.

Appellant filed a claim for a schedule award (Form CA-7) on February 12, 2015. Dr. Eduardo Miralles Alonso, a general practitioner, diagnosed right third finger trauma and laceration on November 5, 2014. On November 6, 2014 Dr. Carmen J. Negron, a radiologist, diagnosed comminuted fracture of the tuft of the fourth finger with osteoarthritic changes at the distal interphalangeal joint including joint space narrowing and marginal osteophytes.

In a letter dated March 30, 2015, OWCP requested that appellant provide additional medical opinion evidence in support of her claim for permanent impairment. It advised that any impairment rating should reference the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). OWCP afforded appellant 30 days to respond.

In notes dated November 6, 2014 and April 28, 2015, Dr. John Velez-Rodriguez, a physiatrist, diagnosed right fourth digit distal phalangeal laceration, comminute fracture, and disturbance of skin sensation. He also noted hand osteoarthritis.

Dr. Miralles examined appellant on April 27, 2015 and found discomfort in the fourth finger with fracture, laceration, and amputation and distal deformity as well as disorders in sensitivity. Appellant submitted several medical reports in Spanish.

In a June 3, 2015 decision, OWCP denied appellant's claim for a schedule award finding that she failed to submit the requested medical evidence to establish permanent impairment.

On May 2, 2016 appellant filed a claim for a schedule award (Form CA-7). In a letter dated May 5, 2016, OWCP requested that she provide additional medical evidence establishing her permanent impairment for schedule award purposes. It again afforded appellant 30 days to respond.

By decision dated June 6, 2016, OWCP denied appellant's claim for a schedule award finding that she had not submitted the medical evidence necessary to establish permanent impairment of a scheduled member.

Appellant requested an oral hearing from OWCP's Branch of Hearings and Review on August 2, 2016. By decision dated August 11, 2016, OWCP's Branch of Hearings and Review denied her requested oral hearing finding that her request was untimely filed and that the issue in the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b) of FECA concerning a claimant's entitlement to a hearing before an OWCP representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."² Section 10.615 of OWCP's regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.³ OWCP regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁴

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁵ has the power to hold hearings and reviews of the written record in certain circumstances where no legal provision was made for such reviews and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing or review of the written record.⁶ OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.⁷

ANALYSIS -- ISSUE 1

In the instant case, OWCP properly determined that appellant's August 2, 2016 request for an oral hearing was untimely filed as it was made more than 30 days after the issuance of OWCP's June 6, 2016 decision. It therefore, properly denied her hearing as a matter of right.

OWCP then appropriately proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. It determined that a hearing was

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁷ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

unnecessary as the issue could be resolved through the submission of evidence in the reconsideration process. Therefore, OWCP properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny her request for a hearing as she had other review options available.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of FECA⁸ and its implementing regulations⁹ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.¹⁰

OWCP's procedures provide that specific medical evidence is required to support a schedule award including: competent medical evidence which shows that the impairment has reached a permanent and fixed state or maximum medical improvement; medical evidence which describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability; and medical evidence which gives a percentage of impairment based on a specific diagnosis.¹¹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member entitling her to a schedule award.

On May 2, 2016 appellant filed a claim for a schedule award. In a letter dated May 5, 2016, OWCP requested that she provide additional medical evidence establishing her permanent impairment for schedule award purposes. It afforded appellant 30 days to respond. Appellant did not provide any evidence addressing her permanent impairment. The Board notes that there is no evidence of record complying with the requirements to establish permanent impairment, no medical opinion that appellant has reached maximum medical improvement, no medical evidence which describes the impairment in sufficient detail for the claims examiner to visualize

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404.

¹⁰ For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability*, Chapter 2.808.5 (February 2013).

the character and degree of disability, and no medical evidence which gives a percentage of impairment based on a specific diagnosis.¹² As appellant failed to provide medical evidence of permanent impairment as a result of her accepted condition of open fracture of her right phalanx, she has not met her burden of proof.

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 the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely. The Board further finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member entitling her to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT August 11 and June 6, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 13, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² See *id.*; see also *Vanessa Young*, 55 ECAB 575 (2004).