

ISSUE

The issue is whether appellant has met his burden of proof to establish permanent impairment of a scheduled member, for schedule award purposes.

On appeal counsel contends that OWCP failed to submit relevant evidence to the medical adviser.

FACTUAL HISTORY

On July 23, 2003 appellant, then a 55-year-old computer specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 21, 2003 he fell backward while carrying a computer down stairs. He then felt dizzy and experienced chest pain. Appellant also bruised his left knee. OWCP denied the claim by decision dated December 31, 2003 noting that appellant failed to submit any medical evidence supporting his claim. Appellant requested reconsideration on April 22, 2004. In a decision dated May 13, 2004, OWCP vacated the December 31, 2003 decision finding that further development was warranted.

In a letter dated May 13, 2004, OWCP requested that appellant provide additional factual and medical evidence in support of his claim and allowed 30 days for a response.

In a report dated July 7, 2004, Dr. Kenneth M. Caldwell, a Board-certified orthopedic surgeon, indicated that appellant fell and injured his left upper extremity on July 21, 2003 when his left knee collapsed. He noted that appellant had a history of chronic anterior cruciate ligament (ACL) insufficiency in the left knee. Dr. Caldwell diagnosed post-traumatic degenerative arthritis of the left wrist secondary to chronic scaphoid fracture and long-standing ACL insufficiency of the left knee.

By decision dated August 9, 2004, OWCP accepted appellant's claim for lumbar strain, aggravation of arthritis in the left wrist, and aggravation of arthritis in the left knee.

Appellant filed a recurrence claim (Form CA-2a) on April 30, 2005. He alleged that his left knee, back, and left wrist symptoms continued and that he required surgery. Appellant noted in August 14, 2000 he tore his ACL in the performance of duty. He reported continued left wrist, lower back, ACL, neck, and shoulder pain following his July 21, 2003 fall in the performance of duty. Appellant indicated that on June 29, 2004 he had twisted his left knee while exiting a car. On April 5, 2005 his left knee collapsed and he fell striking his head, lower back, neck, and right shoulder.

Appellant filed a second recurrence claim on September 13, 2005 alleging that as a result of his July 21, 2003 employment injury he required additional medical treatment. He underwent a cervical magnetic resonance imaging (MRI) scan on April 29, 2005 which demonstrated mild-to-moderate cervical spondylosis on the right side at C5-6 and C6-7. OWCP accepted appellant's claim for lumbar sprain, osteoarthritis of the hand, and primary osteoarthritis of the lower leg.

Appellant underwent a right shoulder MRI scan on December 11, 2006 which demonstrated moderate acromioclavicular (AC) joint hypertrophy. On January 15, 2007 he underwent right shoulder arthroscopic subacromial decompression and labral debridement.

Appellant underwent a right shoulder MRI scan on August 20, 2008 which demonstrated postoperative changes in the AC joint.

Appellant underwent a lumbar MRI scan on June 25, 2009 which demonstrated trace retrolisthesis of L5 on S1 with disc bulge and right paracentral disc protrusion, and diffuse annulus tear. His MRI scan demonstrated small annulus tears at L4-5 and L3-4. On March 30, 2010 appellant's lumbar x-rays demonstrated mild degenerative disc disease at L5-S1.

On March 16, 2010 OWCP accepted the additional conditions of disorder of the bursae and tendons in the right shoulder as due to his accepted July 31, 2003 employment injury.³

Appellant underwent left knee x-rays on May 19, 2011 which demonstrated mild degenerative changes and mild medial compartment narrowing. X-rays dated May 19, 2011 of appellant's left wrist demonstrated irregularity of the scaphoid with central lucency and sclerosis consistent with chronic scaphoid fracture. These x-rays also showed degenerative changes and disc base narrowing of the radial-carpal joint space.

In a letter dated April 25, 2012, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. By decision dated June 6, 2012, it terminated his wage-loss compensation and benefits that same day. Appellant requested a review of the written record from OWCP's Branch of Hearings and Review on July 3, 2012. By decision dated September 28, 2012, OWCP's hearing representative affirmed the June 6, 2012 termination decision.

On September 15, 2014 appellant filed a claim for a schedule award (Form CA-7). In a letter dated October 21, 2014, OWCP requested additional medical evidence was necessary in support of appellant's claim for a scheduled award.

By decision dated January 7, 2015, OWCP denied appellant's claim for a schedule award, finding that he failed to submit medical evidence in support of his claimed permanent impairment.

Counsel requested an oral hearing from a representative with OWCP's Branch of Hearings and Review on January 13, 2015, which was held on July 17, 2015. OWCP's hearing representative left the record open for an additional 30 days to allow counsel to submit additional medical evidence.

³ On March 22, 2011 OWCP proposed to suspend appellant's compensation benefits based on his failure to cooperate with medical examinations. By decision dated April 6, 2011, It finalized suspension of his wage-loss compensation benefits effective April 10, 2011 due to his failure to cooperate with a medical examination.

Appellant requested a review of the written record from OWCP's Branch of Hearings and Review on April 14, 2011. In a decision dated August 16, 2011, OWCP's hearing representative affirmed the April 6, 2011 decision suspending, compensation benefits. She noted, however, that as of April 15, 2011 appellant had expressed a willingness to undergo the medical examination and thus OWCP should reinstate appellant's benefits effective that date upon receipt of a medical report confirming his full cooperation. The record reveals that OWCP reinstated wage loss compensation and medical benefits. .

By decision dated September 9, 2015, OWCP's hearing representative affirmed OWCP's January 7, 2015 decision, noting that appellant had failed to submit medical evidence supporting permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁴ (hereinafter A.M.A. *Guides*).

On April 4, 2016 Counsel requested reconsideration of the September 9, 2015 decision and submitted a report from Keith L. Blankenship, a physical therapist, dated December 16, 2015. He also submitted a note dated July 17, 2014 from Dr. David E. Hipp, a Board-certified internist, diagnosing coronary artery disease, adult-onset diabetes, hypertension, and hyperlipidemia. Dr. Hipp noted that appellant had chronic lower back pain, right shoulder discomfort, and a left knee torn ACL. He opined that appellant had reached maximum medical improvement (MMI) from his conditions.

By decision dated May 23, 2016, OWCP reviewed the merits of appellant's claim and denied modification of its prior decisions.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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*.⁷

A schedule award can be paid only for a condition related to an employment injury. 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.⁸

Healthcare providers such as nurses, acupuncturists, physician assistants, and physical therapists are not considered physicians under FECA and their reports and opinions do not

⁴ A.M.A., *Guides*, 6th ed. (2009).

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ 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); Federal (FECA) Procedure Manual, Part 3- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ *Veronica Williams*, 56 ECAB 367 (2005).

constitute competent medical evidence to establish a medical condition, disability, causal relationship or permanent impairment for schedule award purposes.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of a scheduled member.

In support of his claim for permanent impairment of a scheduled member, appellant submitted a report dated July 17, 2014 from Dr. Hipp opining that appellant had reached MMI for a series of conditions including lower back pain, right shoulder discomfort, and torn ACL in the left knee. This report does not provide any findings or correlate them to the appropriate provisions of the A.M.A., *Guides*, and thus cannot establish the degree of permanent impairment of any schedule member. Dr. Hipp's report is therefore insufficient to meet appellant's burden of proof to establish a ratable impairment causally related to his employment injury.¹⁰

Appellant also submitted a report dated December 16, 2015, from Mr. Blankenship, a physical therapist. As noted previously, physical therapists are not considered physician under FECA and as this report was not counter-signed by a physician, it does not constitute medical evidence and has no probative value in establishing appellant's schedule award claim.¹¹

Appellant may request a schedule award or increased schedule award, at any time, 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 his burden of proof to establish permanent impairment of a scheduled member, for schedule award purposes.

⁹ 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

¹⁰ *Barbara J. Williams, id.*

¹¹ *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2017
Washington, DC

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

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

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