United States Department of Labor
Employees' Compensation Appeals Board

J.Y., Appellant	)	
and	)	**Docket No. 17-0357**
	)	**Issued: November 13, 2017**
DEPARTMENT OF THE AIR FORCE, TRAVIS AIR FORCE BASE, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 6, 2016 appellant filed a timely appeal from an October 5, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant established more than 16 percent permanent impairment of the skin, for which he previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[2] On August 11, 2008 appellant, then a 44-year-old auto mechanic, filed an occupational disease claim (Form CA-2) alleging that on October 29, 1987 he first became aware of his psoriasis. It was not until July 18, 2008 that he realized this condition had been aggravated by his working with and exposure to aviation fuel.[3] OWCP accepted the claim for temporary aggravation of psoriasis, which it found ceased by 2004. Appellant did not stop work.

On January 29, 2009 appellant filed a claim for a schedule award (Form CA-7).

By letter dated February 25, 2009, OWCP informed appellant that his claim for a schedule award could not be considered since there was no medical evidence establishing that he had reached maximum medical improvement (MMI). It also advised that schedule awards were granted when the accepted employment injury results in a permanent loss or loss of use of a function or member of the body as listed in 20 C.F.R. § 10.404 and 5 U.S.C. § 8107.

In a report dated February 26, 2009, Dr. Allison R. Edwards, an attending Board-certified internist, diagnosed psoriatic arthritis, which she opined was permanent and had been caused by appellant's psoriasis. She reported that he had severe pain in both knees and that psoriasis could impact the joints and skin.

Dr. Edwards, in a May 14, 2009 supplemental impairment report, noted that appellant was evaluated for severe bilateral knee pain and psoriasis due to work-related exposure to environmental toxins. She diagnosed bilateral knee psoriatic arthropathy and calculated an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent* Impairment (A.M.A., *Guides*).[4] Physical examination findings revealed decreased bilateral knee range of motion. A review of an x-ray revealed less than one millimeter cartilage interval and diagnosis of psoriatic arthropathy. In an attached permanent impairment worksheet, Dr. Edwards found 26 percent permanent impairment of the right knee, 26 percent permanent impairment of the left knee and combined lower extremity impairment of 36 percent permanent impairment based on a primary diagnosis of psoriatic arthropathy and subsidiary diagnoses of psoriasis and sarcoidosis. The permanent impairment rating was based on a class 3 and grade A. Dr. Edwards assigned a grade modifier of two for functional history and physical examination findings.

On October 26, 2009 an OWCP district medical adviser (DMA) reviewed the medical record and opined that the psoriasis would not impact the knee cartilage of internal structure. He further opined that the condition of psoriasis should not be accepted.

[2] *Order Dismissing Appeal*, Docket No. 10-1892 (issued January 21, 2011) and *Order Remanding Case*, Docket No. 13-0471 (issued January 2, 2014).

[3] Appellant retired from the employing establishment on disability effective September 7, 2004.

[4] 6th ed. 2009.

On January 14, 2010 OWCP referred appellant to Dr. Olumuyiwa Paul, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Edwards and the DMA regarding appellant's eligibility for a schedule award.

In a report dated February 3, 2010, Dr. Paul, based upon a review of the medical record, statement of accepted facts (SOAF), and physical examination, concluded that there was no physical or radiographic signs supporting a diagnosis of psoriatic arthritis or inflammatory knee arthropathy.

By decision dated March 19, 2010, OWCP denied appellant's claim for a schedule award. It found the evidence of record insufficient to establish permanent impairment to a scheduled member due to the accepted employment injury.

On March 26, 2010 appellant requested a review of the written record by an OWCP hearing representative. He also submitted additional evidence.

In a February 18, 2010 report, Dr. Ross S. Myerson, an examining Board-certified occupational medicine physician, noted appellant's employment and medical histories. He also related appellant's physical examination findings. Dr. Myerson opined that, without a doubt, appellant's exposure to jet fuel and likely exposure to lubricants and hydraulic fluid aggravated his underlying psoriasis.

By decision dated June 28, 2010, OWCP's hearing representative affirmed the March 19, 2010 decision denying appellant's claim for a schedule award. The hearing representative found the evidence of record insufficient to establish that appellant's knee condition was causally related to his federal employment.

In a November 29, 2010 report, Dr. John Parkerson, an examining Board-certified occupational medicine physician, reviewed appellant's medical history and performed a physical examination. He related that appellant's examination findings included multiple psoriatic lesions throughout his body and including his lower legs. Dr. Parkerson diagnosed occupational psoriasis. Using Table 8-2 and Table 8-3 of the sixth edition of the AM.A., *Guides*, he found a class 3 impairment based on 33 percent involvement of a total body surface area and found 36 percent whole person permanent impairment based on a diagnosis of psoriasis vulgaris. In an attached permanent impairment worksheet, Dr. Parkerson noted an injury date of October 29, 1987 and diagnosis of psoriasis. Using Table 8-2, he assigned a class 3 and grade C, which resulted in 36 percent whole person permanent impairment.

In a December 3, 2010 consultation note, Dr. Parkerson noted that appellant was first seen on August 16, 2010 for an examination of his psoriasis. He concluded that appellant was at MMI.[5]

[5] On July 13, 2010 appellant appealed to the Board. By order dated January 21, 2011, the Board granted his request to dismiss his appeal before the Board. *Order Dismissing Appeal*, Docket No. 10-1892 (issued January 21, 2011).

On February 10, 2011 appellant requested that OWCP reconsider its denial of his request for a schedule award.

On September 19, 2011 OWCP referred appellant for a second opinion evaluation with Dr. Jay Barnett, a Board-certified dermatologist, to provide an assessment of appellant's condition.

By decision dated September 22, 2011, OWCP denied modification of its prior decision. It found that the evidence submitted was insufficient to establishment entitlement to a schedule award due to the accepted temporary aggravation of psoriasis.

In an October 6, 2011 report, Dr. Barnett, based upon a review of the medical record, SOAF, and physical examination, concluded that appellant's accepted temporary aggravation of psoriasis had ceased in 2004 when he was no longer exposed to jet fuel.

On November 21, 2011 appellant requested reconsideration.

By decision dated February 16, 2012, OWCP denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

On March 20, 2012 appellant again requested reconsideration.

By decision dated June 20, 2012, OWCP denied appellant's request for reconsideration of the merits of his claim as he had failed to identify the basis for his request or submit new and relevant pertinent evidence.

On November 14, 2012 appellant again requested reconsideration.

By decision dated December 18, 2012, OWCP dismissed and closed appellant's November 6, 2012 reconsideration request.

On December 20, 2012 appellant appealed to the Board. By order dated January 2, 2014, the Board set aside OWCP's December 18, 2012 decision denying his request for reconsideration.[6] The Board found that OWCP had failed to provide any explanation for the denial of appellant's request and remanded the case to OWCP to comply with section 8124(a) of FECA.

By decision dated December 1, 2014, OWCP vacated the December 18, 2012 decision, but affirmed the denial of appellant's claim for a schedule award. It found that the evidence of record was insufficient to establish that his alleged psoriatic arthritis had been caused by his exposure to jet fuel or that he had any permanent impairment of his extremities or skin due to the accepted employment injury.

On December 5, 2014 and March 25, 2015 appellant again requested reconsideration and submitted reports by Dr. Robert S. Berger, an examining Board-certified dermatologist. In a

[6] *Order Remanding Case*, Docket No. 13-0471 (issued January 2, 2014).

March 5, 2014 report, Dr. Berger diagnosed permanent psoriasis of unknown etiology. In a March 12, 2015 report, he noted that appellant was seen for his psoriasis and reported the treatment provided. In a March 18, 2015 report, Dr. Berger diagnosed inflammatory pigmentary changes associated with psoriasis which he attributed to chemical exposure in 2004.

By decision dated June 23, 2015, OWCP denied modification. It found that the evidence submitted by appellant was insufficient to establish entitlement to a schedule award.

On September 14, 2015 appellant again requested reconsideration. In support of his request, he submitted a September 14, 2015 report by Dr. Edwards. Dr. Edwards provided a definition of psoriasis and explained how plaque psoriasis, as in appellant's case, became activated. She further noted that inflammation could cause blackened skin or hyperpigmentation and explained what hyperpigmentation entailed. Dr. Edwards explained the increase of melanin and subsequent transfer of pigment was the cause of the blackened skin on appellant's trunk, both legs, and both thighs.

By decision dated March 10, 2016, OWCP denied modification. It found that the report by Dr. Edwards was insufficient to establish that the pigmentary changes had been caused or aggravated by the accepted work condition or awareness that appellant had been granted a schedule award for 16 percent permanent impairment under OWCP File No. xxxxxx386.[7]

On April 18, 2016 appellant requested reconsideration and submitted an April 18, 2016 report by Dr. Edwards in support of his request.

In an April 18, 2016 report, Dr. Edwards noted appellant's exposure to jet fuel from 2001 to 2004 and its impact on his health. She explained how this exposure caused an increase in mast cells, which she related are produced in the bone marrow, and played a role in aggravating his plaque psoriasis. Dr. Edwards also explained that the increase in mast cell density in the skin due to jet fuel exposure caused appellant's blackened skin or hyperpigmentation. She referred to the 16 percent permanent impairment rating he received for exposure to chemicals while working with a water purification process and which caused contact dermatitis. Dr. Edwards opined that this prior exposure to chemicals did not cause appellant's hyperpigmentation. Referencing the sixth edition of the A.M.A., *Guides*, she opined that he had 62.06 percent permanent impairment of his skin due to the diagnosed severe psoriasis and blackened skin. In reaching this impairment rating, Dr. Edwards divided the 36 percent whole person impairment found by Dr. Parkerson by 58 then multiplied by 100 to arrive at 62.06 percent impairment.

On August 19, 2016 OWCP referred appellant to Dr. Ghazala Kazi, Board-certified in occupational medicine, for a second opinion evaluation, to clarify the cause and extent of his employment-related impairment.

In a September 2, 2016 report, Dr. Kazi, based upon a review of medical evidence, medical and employment injury histories, SOAF, and physical examination, diagnosed psoriasis.

[7] Appellant was employed by a different federal employing establishment at the time of this accepted injury. OWCP File No. xxxxxx386 involves an occupational disease claim filed on January 4, 2013 for psoriasis due to chemical water treatment duties performed at the White House service center.

A physical examination revealed the left and right calves showed lichenfied lesions, an active right flank lesion, right thigh hyperpigmentation, and small areas of hyperpigmentation on the back. Using Table 8-2, pages 166 and 167 of the A.M.A, *Guides*, Dr. Kazi determined that appellant had 15 percent whole person impairment for his psoriasis with skin lesion biopsy and 0 percent whole person impairment for worsening of his condition. In reaching this conclusion, he assigned a category B for severity for diagnostic findings and history. Dr. Kazi noted that the impairment rating did not distinguish between whether the aggravation of the psoriasis had been caused by jet fuel exposure or chemical water treatment exposure. He also noted his disagreement with Dr. Edwards' impairment rating of 62.06 percent as appellant did not have any limitations on his activities of daily living, there were no active lesions of lichenification present on the wrists or hands, no skin temperature changes, no abnormal hair or nail growth, no joint stiffness, and no mottled, thin, or shiny skin.

On September 28, 2016 a DMA reviewed the reports from Drs. Edwards and Kazi, as well as the SOAF. Using Table 8-2, page 166, he assigned class 1 with a default grade of C and five percent whole person permanent impairment. DMA assigned a class 2 for physical examination findings and for diagnostic test findings, which adjusted the grade to the right, resulting in nine percent whole person permanent impairment. Next, he divided 9 percent by 58 percent, the maximum percent allowable for skin impairment under FECA, multiplied by 100 to arrive at 15.5 percent permanent impairment to the skin, which he rounded up to 16 percent permanent impairment. OWCP's DMA explained that the 16 percent permanent impairment included the impairment rating received under another claim, which he noted was most likely for psoriasis.

By decision dated October 5, 2016, OWCP denied appellant's claim for an additional schedule award. It found the medical evidence of record insufficient to demonstrate an additional schedule award due to his accepted jet fuel exposure.

LEGAL PRECEDENT

The schedule award provision of FECA[8] and its implementing regulations[9] 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.[10] Effective May 1, 2009, OWCP adopted

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] *Id.*

the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[11]

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or in the implementing regulations.[12] The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.[13] Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.[14] By authority granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina, and skin.[15] Schedule award for the skin (205 weeks) may be paid for injuries occurring on or after September 11, 2001.[16]

Impairment ratings for schedule awards include those conditions accepted by OWCP as employment related, and any preexisting permanent impairment of the same member or function.[17] If the employment-related injury has affected any residual usefulness in whole or in part, a schedule award may be appropriate.[18] There are no provisions for apportionment under FECA.[19]

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.[20] It is the claimant's burden of proof to establish that he sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[21] OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred.[22] An impairment description must be of sufficient

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

[12] *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

[13] 5 U.S.C. § 8107(c).

[14] *Id.*

[15] *Id.* at § 8107(c)(22); 20 C.F.R. §10.404(b).

[16] 20 C.F.R. § 10.404(b) (2011); *supra* note 11 at 2.808.5(c)(4).

[17] *Supra* note 11 at Chapter 2.808.5(d).

[18] *Id.*

[19] *Id.*

[20] *G.E.*, Docket No. 09-1412 (issued February 17, 2010); *Thomas P. Lavin*, 57 ECAB 353 (2006).

[21] *D.F.*, Docket No. 09-1463 (issued August 12, 2010); *Tammy L. Meehan*, 53 ECAB 130 (2001).

[22] *See D.S.*, Docket No. 08-0885 (issued March 17, 2009); *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

detail so the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[23]

ANALYSIS

OWCP accepted the claim for temporary aggravation of psoriasis, which it found ceased by 2004. In the most recent decision dated October 5, 2016, it found that the medical evidence of record was insufficient to establish entitlement to a schedule award greater than the 16 percent permanent impairment award for the skin, which was granted under another claim.

The Board finds that appellant has not established entitlement to greater than 16 percent permanent impairment for his skin.[24]

The record contains reports from Dr. Edwards who opined that appellant had 62.06 percent permanent impairment of his skin due to the diagnosed severe psoriasis and blackened skin. In reaching this impairment rating, she divided the 36 percent whole person impairment found by Dr. Parkerson by 58 then multiplied by 100 to arrive at 62.06 percent impairment. However, Dr. Edwards did not specifically reference the A.M.A., *Guides* or explain how she arrived at this impairment rating in accordance with the relevant standards of the A.M.A., *Guides*.[25] She failed to refer to any tables or charts in the A.M.A., *Guides* in support of her determination. Thus, Dr. Edwards' report is of diminished probative value in determining the extent of appellant's permanent impairment.[26]

In a September 2, 2016 report, Dr. Kazi determined appellant had 15 percent whole person impairment based on his psoriasis with skin lesion biopsy and 0 percent whole person impairment for worsening of his condition. Using Table 8-2, pages 166 and 167 of the A.M.A, *Guides*, he assigned a category B for severity for diagnostic findings and history. Dr. Kazi noted that the impairment rating did not distinguish between whether the aggravation of the psoriasis had been caused by jet fuel exposure or chemical water treatment exposure. The Board notes that Dr. Kazi's report does not comply with FECA as FECA does not allow schedule awards for impairment to the whole person.[27] Thus, Dr. Kazi's report is of diminished probative value.

On September 28, 2016 a DMA reviewed the reports from Drs. Edwards and Kazi and the SOAF. Using Table 8-2, page 166, he assigned class 1 with a default grade of C and five percent whole person permanent impairment. The DMA assigned a class 2 for physical examination findings and for diagnostic test findings, which adjusted the grade to the right, resulting in 9 percent whole person permanent impairment next, he divided 9 percent by 58

[23] *C.A.*, Docket No. 13-0762 (issued April 1, 2014); *Peter C. Belkind*, 56 ECAB 580 (2005).

[24] The Board notes that if the accepted temporary aggravation of psoriasis resulted in any impairment to appellant's extremities he may be entitled to a schedule award using the A.M.A., *Guides* based on range of motion deficits in the extremities. *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

[25] *See Tonya R. Bell*, 43 ECAB 845, 849 (1992).

[26] *Id.*

[27] *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *John Yera*, 48 ECAB 243 (1996).

percent, the maximum percent allowable for skin impairment under FECA, multiplied by 100 to arrive at 15.5 percent impairment to the skin, which he rounded up to 16 percent permanent impairment. The DMA concluded that the 16 percent impairment included the impairment rating received under the prior claim.

OWCP may rely on the opinion of a DMA to apply the A.M.A., *Guides*.[28] The Board finds that, the January 23, 2015 impairment rating from the DMA represents the weight of the medical evidence in this case as he properly applied the appropriate provisions of the A.M.A., *Guides* to the clinical findings of record.[29] Accordingly, as the record contains no other probative, rationalized medical opinion which indicates that appellant has greater impairment based on his accepted temporary aggravation of psoriasis, OWCP properly granted a schedule award for 16 percent permanent impairment of his skin in its October 5, 2016 decision.

On appeal appellant argues that OWCP should have used the impairment rating by Dr. Edwards and that the DMA should have used that report in calculating his impairment. As discussed above, Dr. Edwards did not reference the A.M.A., *Guides* in her impairment rating and, thus, her impairment rating was of diminished probative value. In calculating appellant's permanent impairment, the DMA reviewed the medical evidence of record including Dr. Edwards' impairment rating. He provided the only medical opinion based on a proper application of the A.M.A., *Guides*.

Appellant may request a schedule award or increased schedule award based at any time 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 greater than 16 percent permanent impairment of the skin, for which he previously received a schedule award.

[28] *See J.G.*, Docket No. 09-1714 (issued April 7, 2010); *Linda Beale*, 57 ECAB 429 (2006).

[29] *W.M.*, Docket No. 11-1156 (issued January 27, 2012); *Laura Heyen*, 57 ECAB 435 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 5, 2016 is affirmed.

Issued: November 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