

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

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**J.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

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**Docket No. 18-0073  
Issued: April 23, 2018**

*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 October 11, 2017 appellant filed a timely appeal from an April 19, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.<sup>2</sup>

**ISSUE**

The issue is whether appellant has established permanent impairment of a scheduled member, warranting a schedule award.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted new evidence on appeal. The Board's jurisdiction, however, is limited to reviewing the evidence that was before OWCP at the time it issued its final decision. Thus, the Board is precluded from considering this new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 21, 2006 appellant, then a 49-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained an umbilical hernia on November 21, 2003 when lifting heavy tubs of mail at work. OWCP assigned the claim File No. xxxxxx861 and accepted the claim on June 10, 2009 for precipitation of a preexisting umbilical hernia. Under OWCP File No. xxxxxx608, it accepted that appellant sustained an umbilical hernia on December 8, 2004 which required surgical repair. OWCP assigned the claim File No. xxxxxx608. It expanded acceptance of the claim under File No. xxxxxx608 to include a pelvic sprain. OWCP combined the two claims under File No. xxxxxx861.

On November 21, 2008 appellant filed a claim for a schedule award (Form CA-7), contending that the accepted umbilical hernias caused permanent lower extremity impairment. By decision dated September 15, 2014, OWCP denied her schedule award claim as the medical evidence of record failed to demonstrate permanent impairment causally related to the accepted November 21, 2003 umbilical hernia. Following a February 12, 2015 hearing, by decision dated April 17, 2015, an OWCP hearing representative affirmed the denial of appellant's schedule award claim. Appellant appealed to the Board. By decision issued February 10, 2016,<sup>4</sup> the Board affirmed OWCP's April 17, 2015 decision as the medical evidence of record did not establish permanent impairment of a scheduled member.

On February 6, 2017 appellant requested reconsideration. She contended that OWCP failed to consider the totality of her claims. Appellant also argued that the accepted umbilical hernias and July 15, 2004 and March 4, 2005 herniorrhaphies caused gynecologic and urinary tract impairments which entitled her to a schedule award. She provided an operative report dated August 1, 2008 by Dr. Megan App, a Board-certified obstetrician and gynecologist, who performed a diagnostic hysteroscopy, dilatation and curettage, and thermal endometrial ablation to treat endometrial polyps. Appellant also submitted an April 29, 2009 magnetic resonance imaging (MRI) scan of the pelvis which demonstrated probable uterine fibroids and a possible paratubal cyst, a June 17, 2016 MRI scan of the lumbar spine, June 22, 2016 MRI scan of the cervical spine, and a June 28, 2016 MRI scan of the thoracic spine which demonstrated multilevel degenerative changes.

By decision dated April 19, 2017, OWCP denied appellant's schedule award claim, as the evidence submitted on reconsideration did not contain medical rationale from a physician supporting that the accepted umbilical hernias caused permanent impairment of a scheduled member of the body.

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<sup>3</sup> Docket No. 15-1768 (issued February 10, 2016); Docket No. 08-0962 (issued August 13, 2008).

<sup>4</sup> Docket No. 15-1768 (issued February 10, 2016).

## LEGAL PRECEDENT

It is the claimant's burden of proof to establish that she sustained permanent impairment of a scheduled member or function as a result of any employment injury.<sup>5</sup>

The schedule award provisions of FECA<sup>6</sup> and its implementing regulations<sup>7</sup> 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 for all claimants, OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants.<sup>8</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides*<sup>9</sup> is used to calculate schedule awards.<sup>10</sup>

The Board notes that in 1960, amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.<sup>11</sup> 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, vulva/vagina, and skin.<sup>12</sup>

## ANALYSIS

The Board finds that appellant has not established permanent impairment of a scheduled member.

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<sup>5</sup> See *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.* at § 10.404(a).

<sup>9</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>10</sup> 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).

<sup>11</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>12</sup> 5 U.S.C. § 8107(c)(22); 20 C.F.R. §10.404(b).

In the prior appeal, the Board found that while appellant had alleged that her accepted hernias and surgical repairs caused permanent impairment to her lower extremities, uterus, and bladder, she had not established a permanent impairment of a scheduled member.<sup>13</sup>

Following the Board's prior decision, appellant requested reconsideration and provided an operative report dated August 1, 2008 by Dr. App, a Board-certified obstetrician and gynecologist, concerning surgery for endometrial polyps, an April 29, 2009 MRI scan of the pelvis which demonstrated uterine fibroids, and June 2016 MRI scans of the cervical, thoracic, and lumbar spine which demonstrated multilevel degenerative changes. These reports do not contain a medical opinion with regard to permanent impairment of the upper or lower extremities, or other scheduled members of the body. The operative note and imaging studies do not reference the A.M.A., *Guides* or otherwise support permanent impairment of a scheduled member causally related to the accepted umbilical hernias. Medical reports which do not address the issue of permanent impairment are irrelevant in a schedule award claim.<sup>14</sup> The Board, therefore, finds that appellant has not established permanent impairment of a scheduled member of the body, warranting a schedule award.<sup>15</sup>

On appeal appellant reiterates that the accepted umbilical hernias and surgical repairs caused compensable permanent impairment of her uterus and urinary tract.<sup>16</sup> She also contends that the sequelae of the hernia repairs were compensable as work hastened the need for surgery.<sup>17</sup> As explained above, appellant has not submitted sufficient medical evidence to establish permanent impairment of a scheduled member of the body causally related to the accepted umbilical hernias.

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 established permanent impairment of a scheduled member, warranting a schedule award.

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<sup>13</sup> The findings made in prior Board decisions are final upon the expiration of 30 days from the date of issuance and, in the absence of new review by OWCP, the subject matter is *res judicata* and not subject to further consideration by the Board. See 20 C.F.R. § 501.6(d); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998); *C.M.*, Docket No. 17-1170 (issued February 16, 2018).

<sup>14</sup> *P.D.*, Docket No. 17-1565 (issued February 21, 2018).

<sup>15</sup> *Id.*

<sup>16</sup> Appellant cites to *Robert W. Griffith*, 51 ECAB 491 (2000); *Glenn C. Chasteen*, 42 ECAB 493 (1991); *Arnold Gustafson*, 41 ECAB 131 (1989); and *Beth P. Chaput*, 37 ECAB 158 (1985).

<sup>17</sup> Appellant cites to *John I. Lattany*, 37 ECAB 129 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 19, 2017 is affirmed.

Issued: April 23, 2018  
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