

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

_____)	
A.O., Appellant)	
)	
and)	Docket No. 17-1920
)	Issued: December 13, 2018
U.S. POSTAL SERVICE, POST OFFICE, Manheim, PA, Employer)	
_____)	

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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 11, 2017 appellant filed a timely appeal from a July 17, 2017 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 met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 17, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On March 22, 2014 appellant, then a 49-year-old city letter carrier, filed a traumatic injury claim alleging that on March 20, 2014 she fainted and fell to the side of her vehicle while in the performance of duty. She landed on her right side, sustaining injuries to her knees, face and shoulder. Appellant stopped work on March 21, 2014.

OWCP developed the claim.³ On February 11, 2016 it accepted appellant's claim for traumatic subarachnoid hemorrhage, traumatic subdural hematoma, and right acromioclavicular joint tear. OWCP paid her compensation benefits.

On April 25, 2017 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated June 2, 2017, OWCP informed appellant that no medical evidence was received in support of her schedule award claim. It requested that she submit a detailed narrative medical report which an attending physician evaluated her permanent impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ OWCP afforded appellant 30 days to provide the requested evidence. No further evidence was received.

On July 17, 2017 OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

LEGAL PRECEDENT

Section 8149 of FECA delegates to the Secretary of Labor the authority to prescribe rules and regulations for the administration and enforcement of FECA. The Secretary of Labor has vested the authority to implement the FECA program with the Director of OWCP.⁵ Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.⁶ FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁷

³ OWCP initially denied the claim on May 12, 2014, affirmed by a hearing representative on November 20, 2014. Appellant subsequently requested reconsideration and, by decision dated February 11, 2016, OWCP vacated the prior decision.

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ See 20 C.F.R. §§ 1.1-1.4.

⁶ For a complete loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

⁷ 20 C.F.R. § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

The sixth edition of the A.M.A., *Guides* was first printed in 2008. Within months of the initial printing, the A.M.A. issued a 52-page document entitled “Clarifications and Corrections, Sixth Edition, *Guides to the Evaluation of Permanent Impairment.*” The document included various changes to the original text, intended to serve as an *erratum*/supplement to the first printing of the A.M.A., *Guides*. In April 2009, these changes were formally incorporated into the second printing of the sixth edition.

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.⁸ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁹

ANALYSIS

The evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body.

Appellant did not submit any medical evidence to establish that her accepted conditions of traumatic subarachnoid hemorrhage, traumatic subdural hematoma, and right acromioclavicular joint tear caused permanent impairment of a scheduled member of the body in accordance with the sixth edition of the A.M.A., *Guides*. By development letter dated June 2, 2017, OWCP requested that she provide a report from a treating physician evaluating permanent impairment. However, no evidence was received.

Consequently, the Board finds that appellant has not established her claim for a schedule award.

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 or function of the body, warranting a schedule award.

⁸ See 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).

⁹ *Isidoro Rivera*, 12 ECAB 348 (1961).

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2018
Washington, DC

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

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

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