

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

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**K.S., Appellant**

**and**

**U.S. POSTAL SERVICE, CAPITAL VIEW  
STATION, Jefferson City, MO, Employer**

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**Docket No. 17-1834  
Issued: March 5, 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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 29, 2017 appellant filed a timely appeal from an August 3, 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 this case.

**ISSUE**

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

**FACTUAL HISTORY**

On December 2, 2016 appellant, then a 57-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained multiple dog bites while delivering mail to a residence on his route. He stopped work on December 2, 2016. OWCP accepted the

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

claim for an open bite of the right lower leg, an abrasion of the right lower leg, a left shoulder rotator cuff strain, bicipital tendinitis of the left shoulder, left shoulder impingement syndrome, and a chronic ulcer of the right calf with an exposed fat layer. OWCP paid appellant wage-loss compensation until April 13, 2017, when he returned to modified employment.

On February 8, 2017 Dr. Jonathan Craighead, a Board-certified orthopedic surgeon, performed an authorized left rotator cuff repair with a limited debridement of the biceps, a biceps tenotomy, and acromioplasty with coracoacromial ligament release.

Appellant, on June 21, 2017, filed a claim for a schedule award (Form CA-7). By letter dated June 28, 2017, OWCP requested that he submit an impairment evaluation from his attending physician addressing whether he had a permanent impairment of an extremity due to his accepted work injury in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>2</sup>.

Dr. Craighead, in a progress report dated June 6, 2017, evaluated appellant after his left shoulder arthroscopic surgery. He found symmetrical range of motion of the shoulders, a lack of pain on impingement testing, and intact sensation. Dr. Craighead found that appellant was doing well after his left shoulder surgery and was at maximum medical improvement (MMI). He released him to resume work without restrictions.

In a July 27, 2017 impairment evaluation, Dr. Craighead discussed appellant's history of an arthroscopic rotator cuff repair subsequent to a work injury. He related that he had reached MMI with "no objective evidence of shoulder impairment." Dr. Craighead noted that appellant had not complained of pain during his last visit and found that, under the sixth edition of the A.M.A., *Guides*, he had zero percent permanent impairment of the left upper extremity.

By decision dated August 3, 2017, OWCP denied appellant's claim for a schedule award. It found that he had not submitted medical evidence sufficient to establish permanent impairment of his left upper extremity.

On appeal appellant asserts that he has loss of use of his arm and that, even though he can work, he can no longer hold his arm away from his body or overhead.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>3</sup> and its implementing federal regulations,<sup>4</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

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> *Id.* at § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

It is the claimant's burden of proof to establish that he or she has sustained permanent impairment of the scheduled member or function as a result of an employment injury.<sup>7</sup> 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, describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant sustained an open bite of the right lower leg, an abrasion of the right lower leg, left shoulder rotator cuff strain, bicipital tendinitis of the left shoulder, left shoulder impingement syndrome, and a chronic ulcer of the right calf with an exposed fat layer due to a December 2, 2016 employment injury. Appellant underwent a left rotator cuff repair on February 8, 2017.

On June 21, 2017 appellant filed a claim for a schedule award. In a July 27, 2017 impairment evaluation, Dr. Craighead opined that appellant had reached MMI after his left rotator cuff repair and had no objective evidence of an impairment of the shoulder. He advised that, under the sixth edition of the A.M.A., *Guides*, appellant had no impairment of the left upper extremity.

The Board finds that Dr. Craighead's report does not support appellant's schedule award claim. Dr. Craighead found no evidence of any permanent impairment under the A.M.A., *Guides*. Appellant has not submitted sufficient evidence to establish that, as a result of his employment injury, he sustained any permanent impairment to a scheduled member warranting a schedule award. It is his burden of proof to establish permanent impairment of a scheduled member as a result of an employment injury.<sup>9</sup>

On appeal appellant contends that he can no longer hold his arm away from his body or overhead. As noted, however, he has the burden of proof to submit medical evidence supporting

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<sup>5</sup> *Id.* at § 10.404(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> *See N.H.*, Docket No. 17-0696 (issued July 29, 2017); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>8</sup> Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 2.808.5 (February 2013).

<sup>9</sup> *See N.H.*, Docket No. 17-0696 (issued July 19, 2017).

permanent impairment of a scheduled member or function of the body. Appellant failed to submit such evidence and thus did not establish entitlement to a schedule award.<sup>10</sup>

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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2018  
Washington, DC

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

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

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

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<sup>10</sup> *Id.*; see also *S.R.*, Docket No. 17-1512 (issued December 12, 2017).