



employment injury; and (2) whether he has established a permanent impairment of his right upper extremity, warranting a schedule award.

### **FACTUAL HISTORY**

On January 7, 2016 appellant, then a 54-year-old supervisory police officer, filed a traumatic injury claim (Form CA-1) alleging that, on December 16, 2015, he injured his right shoulder and right rotator cuff during training. He did not initially stop work. OWCP accepted the claim for right rotator cuff tear.

Dr. Thomas M. O'Meara, Board-certified in family practice, related in a January 12, 2016 employing establishment clinic note that appellant had injured his right rotator cuff at work. He advised that a magnetic resonance imaging (MRI) scan study showed a severe tear of the rotator cuff. Dr. O'Meara opined that appellant could not use his right arm to use his weapon or restrain an individual. He found that he should "restrict his activities to essentially paper work."

On January 18, 2016 Dr. Scott L. Smith, a Board-certified orthopedic surgeon, obtained a history of the December 16, 2015 employment injury and reviewed the results of the MRI scan study. He diagnosed neck pain, a high-grade supraspinatus partial tear, biceps tendinopathy, and a paralabral cyst. Dr. Smith recommended further diagnostic testing to obtain the cause of appellant's significant shoulder weakness and found that he could work with restrictions against using his right arm.

On February 5, 2016 Dr. Smith diagnosed Parsonage-Turner syndrome with possible cervical radiculopathy and a high-grade partial tear of the right supraspinatus, biceps tendinopathy, and upper third subscapularis tearing of the right shoulder.<sup>3</sup> He recommended a rotator cuff repair and listed work restrictions.

The employing establishment, on June 10, 2016, advised appellant that he failed to complete his supervisory probationary period in a satisfactory manner, and therefore, it was reassigning him to a position as a police officer effective June 26, 2016. It based its finding on performance deficiencies.

Dr. Smith, on June 16, 2016, performed a right subacromial decompression and debridement of the labrum. He noted that appellant had a partial thickness rotator cuff tear, biceps tendinopathy, and a superior labrum from anterior to posterior (SLAP) tear of the right shoulder. OWCP authorized appellant's June 16, 2016 surgery.

In a June 27, 2016 work status report, Dr. Smith opined that appellant could resume work on June 28, 2016 with restrictions of no work with the right shoulder and no driving.

The employing establishment offered appellant a light-duty position on July 21, 2016, which he accepted on July 26, 2016.

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<sup>3</sup> A February 2, 2016 electromyogram (EMG) and nerve conduction velocity study (NCV) revealed moderate-to-severe axonal denervation consistent with Parsonage-Turner syndrome of possible traumatic etiology.

Dr. Smith continued to provide work restrictions in progress reports dated July 2016 through March 2017. On March 20, 2017 he diagnosed Parsonage-Turner syndrome of the right shoulder and status post biceps tenodesis. Dr. Smith determined that appellant had reached maximum medical improvement and had permanent work restrictions, including not reaching overhead with his right arm or lifting more than 10 pounds to shoulder level on his right side.

On May 15, 2017 appellant filed multiple claims for wage-loss compensation (Form CA-7) covering the period December 17, 2015 through May 10, 2017. He filed separate claims for loss of overtime pay, night differential, shift differential, holiday pay, and premium pay. Appellant also filed a separate Form CA-7 for lost wages due to his demotion effective June 26, 2016.<sup>4</sup> Lastly, he filed a May 15, 2017 claim (Form CA-7) for a schedule award.

On May 22, 2017 OWCP issued two separate claim development letters. One pertained to the need for appellant to submit medical evidence in support of his claim for a schedule award. That letter was addressed to appellant's surgeon, Dr. Smith, and requested that he provide an impairment rating addressing the extent of any permanent impairment due to the accepted right rotator cuff tear in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>5</sup> OWCP also sent a copy of the schedule award development letter to appellant. It requested that the necessary information be submitted within 30 days.

The other May 22, 2017 claim development letter pertained to appellant's multiple claims (Form CA-7) for various premium pay, including lost overtime, for the period December 17, 2015 through May 10, 2017. OWCP first noted that additional evidence was needed to establish disability from work during the entire period claimed. It also advised appellant that loss of overtime pay was not compensable. With respect to holiday pay, OWCP requested that appellant provide documentation from the employing establishment showing that he was required to work holidays. It also requested that appellant provide dates for any continuation of pay (COP) received during the claimed period, as well as information regarding his annual salary and premium pay. Regarding the claimed period of lost wages due to his demotion (June 26, 2016 -- May 10, 2017), OWCP informed appellant that it had information that his demotion was unrelated to his accepted employment injury. To the extent appellant had information establishing that the demotion was due to his employment injury, OWCP afforded him at least 30 days to submit such evidence, along with the other requested pay-rate information.

By decision dated July 18, 2017, OWCP denied appellant's claim for wage-loss compensation for the periods December 17, 2015 through May 10, 2017 (premium pay) and June 26, 2016 through May 10, 2017 (demotion). It noted that appellant had not responded to its

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<sup>4</sup> On the Form CA-7, the employing establishment represented that appellant's demotion was unrelated to his work injury. It also provided a July 7, 2016 Notification of Personnel Action (Stand Form 50) regarding appellant's reassignment from a supervisory police officer to a police officer, effective June 26, 2016. The remarks section of the SF-50 noted that appellant's conversion back to a police officer was the result of him having failed to satisfactorily complete the probationary period for the supervisory (or managerial) position.

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

May 2017 request for additional factual and medical evidence. OWCP found that the current record failed to support disability during the claimed period.

By separate July 18, 2017 decision, OWCP denied appellant's claim for a schedule award. It explained that the medical evidence of record did not support a permanent impairment of a scheduled member or function of the body.

On his application for review (Form AB-1), appellant challenged OWCP's July 18, 2017 decision denying his claim for a schedule award. He explained that he never received OWCP's May 22, 2017 development letter.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>7</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>8</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>9</sup>

Section 8114(e) of FECA provides that, in addition to annual base pay, certain items will be included in the computation of pay, such as the value of subsistence and quarters, premium pay, and any form of remuneration in kind for services.<sup>10</sup> Consequently, when the job held at the time of injury includes elements of pay such as night or shift differential, extra compensation for work performed on Sundays and holidays, or pay for administratively uncontrollable overtime, OWCP must include the additional pay in the base pay.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained a right rotator cuff tear on December 16, 2015. On January 12, 2016 Dr. O'Meara, an employing establishment physician, diagnosed a right rotator cuff tear and found that he should perform "essentially paper work." Appellant's attending physician, Dr. Smith, provided work restrictions in reports dated January 2016 through March 2017.

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<sup>6</sup> *Supra* note 1.

<sup>7</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

<sup>8</sup> See *Amelia S. Jefferson*, *id.*

<sup>9</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>10</sup> 5 U.S.C. § 8114(e).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.6(b)(7) (March 2011).

On May 15, 2017 appellant filed claims for compensation requesting compensation from December 17, 2015 to May 10, 2017 for lost premium pay, overtime, shift differential, holiday pay, and night differential. He also claimed that he experienced lost wages from June 26, 2016 to May 10, 2017 due to a demotion. The record, however, indicates that effective June 26, 2016 the employing establishment reassigned appellant to his prior position as a police officer after finding that he did not satisfactorily complete the probationary period for the position of supervisory police officer due to performance deficiencies unrelated to his employment injury.

By development letter dated May 22, 2017, OWCP requested that appellant submit information in support of his claim that he lost premium pay. It further noted that the evidence supported that his demotion was unrelated to his work injury. Lastly, OWCP requested that appellant submit medical evidence to establish disability from work during the entire period claimed. Appellant did not, however, respond to OWCP's request with any additional evidence. He has the burden of proof to submit evidence supporting disability in the form of lost wages for the periods claimed.<sup>12</sup> Appellant did not submit such evidence, and thus, failed to meet his burden of proof.<sup>13</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the merit decision, pursuant to 5 U.S.C. § 8121(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

The schedule award provisions of FECA,<sup>14</sup> and its implementing federal regulations,<sup>15</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 A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>16</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>17</sup>

It is the claimant's burden of proof to establish that he or she has sustained permanent impairment of a scheduled member or function as a result of an employment injury.<sup>18</sup> OWCP's procedures provide that, to support a schedule award, the file must contain competent medical

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<sup>12</sup> See *A.L.*, Docket No. 16-1092 (issued May 9, 2017).

<sup>13</sup> *Id.*

<sup>14</sup> 5 U.S.C. § 8107.

<sup>15</sup> 20 C.F.R. § 10.404.

<sup>16</sup> *Id.* at § 10.404(a).

<sup>17</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) ( March 2017); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>18</sup> See *Edward Spohr*, 54 ECAB 806 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

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>19</sup>

### **ANALYSIS -- ISSUE 2**

On May 15, 2017 appellant filed a claim for a schedule award. By decision dated July 18, 2017, OWCP denied his schedule award claim as he failed to submit an impairment evaluation establishing a permanent impairment resulting from his work injury.

The Board finds that appellant failed to submit evidence sufficient to establish permanent impairment of a scheduled member or function warranting a schedule award. In a development letter dated May 22, 2017, OWCP informed him and his attending physician of the type of evidence necessary to establish his schedule award claim and afforded him 30 days to submit an impairment evaluation.

Appellant did not respond to OWCP's May 22, 2017 development letter prior to OWCP's issuance of the July 18, 2017 decision. He has the burden of proof to establish permanent impairment of a scheduled member or function of the body.<sup>20</sup> The medical evidence must include a description of any permanent impairment in sufficient detail that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>21</sup> Appellant failed to provide such evidence and thus has not met his burden of proof.<sup>22</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 that he was totally disabled for the period December 17, 2015 through May 10, 2017, causally related to his December 16, 2015 employment injury. The Board further finds that he has not established permanent impairment of his right upper extremity, warranting a schedule award.

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<sup>19</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(b) (March 2017).

<sup>20</sup> See *A.C.*, Docket No. 13-1408 (issued November 15, 2013); *D.H.*, 58 ECAB 358 (2007).

<sup>21</sup> See *supra* note 17; see also *D.T.*, Docket No. 17-0102 (issued April 13, 2017).

<sup>22</sup> See *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 18, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 22, 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