

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

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**A.T., Appellant**

**and**

**U.S. POSTAL SERVICE, CHICAGO  
NETWORK DISTRIBUTION CENTER,  
Forest Park, IL, Employer**

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**Docket No. 18-0864  
Issued: October 9, 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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 14, 2018 appellant filed a timely appeal from a February 21, 2018 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 a permanent impairment of either upper extremity entitling her to a schedule award.

**FACTUAL HISTORY**

On August 1, 2015 appellant, then a 49-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date, while at work, she sustained swelling and tingling of the left

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

shoulder throwing sacks down from a keying station.<sup>2</sup> She stopped work the next day on August 2, 2015. OWCP accepted the claim for a sprain of the left rotator cuff capsule, a sprain of the cervical spine ligaments, cervical radiculopathy, unspecified cervical disc displacement, cervical spinal stenosis, and left shoulder and upper arm acromioclavicular sprain. It paid appellant wage-loss compensation for total disability beginning September 15, 2015 as the employing establishment was unable to accommodate her work restrictions.

On January 3, 2017 Dr. Kern Singh, a Board-certified orthopedic surgeon, performed a cervical discectomy and fusion at C5-6.

Appellant underwent a functional capacity evaluation (FCE) on August 17, 2017. The evaluator determined that she provided variable efforts on the evaluation and that as a result he was unable to determine her exact work abilities.

In a report dated September 14, 2017, Dr. Singh reviewed the result of the FCE and found that appellant had full motor strength of the upper extremity. He diagnosed status post anterior cervical discectomy and fusion at C5-6. Dr. Singh released appellant to resume work without restrictions, noting that she provided inconsistent effort on the FCE. He opined that she had reached maximum medical improvement (MMI).<sup>3</sup>

Appellant, on October 3, 2017, filed a claim for a schedule award (Form CA-7). On October 5, 2017 OWCP requested that she submit an impairment evaluation from her attending physician addressing the extent of any permanent impairment using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>4</sup>

On October 17, 2017 appellant advised OWCP that her physician did not provide impairment ratings and requested a second opinion examination.<sup>5</sup>

By decision dated February 21, 2018, OWCP denied appellant's claim for a schedule award. It found that she had not submitted any medical evidence demonstrating that she had a permanent impairment.

On appeal, appellant asserts that she has not reached MMI.

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<sup>2</sup> OWCP previously accepted that appellant sustained tendinitis of the left arm due to an August 21, 2002 work injury under File No. xxxxxx762, and right lateral epicondylitis due to an October 12, 2013 work injury under File No. xxxxxx822.

<sup>3</sup> Appellant resumed her usual employment on September 15, 2017.

<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> On October 25, 2017 appellant telephoned OWCP and indicated that her physician would perform a permanent impairment rating; however, on October 27, 2017 she related that he would not evaluate her impairment and again requested a second opinion examination.

## LEGAL PRECEDENT

The schedule award provision of FECA,<sup>6</sup> and its implementing federal 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 A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>8</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>9</sup>

A claimant has the burden of proof under FECA to establish a permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.<sup>10</sup> Before the A.M.A., *Guides* can be utilized a description of impairment must be obtained from his physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decrease in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>11</sup>

OWCP's procedures provide that, if a claimant has not submitted an impairment evaluation, it should request a detailed report that "includes history of clinical presentation, physical findings, functional history, clinical studies or objective tests, analysis of findings, and the appropriate impairment based on the most significant diagnosis, as well as a discussion of how the impairment rating was calculated."<sup>12</sup> If the claimant does not provide an impairment evaluation, "and there is no indication of permanent impairment in the medical evidence of file, the [claims examiner] may proceed with a formal denial of the award."<sup>13</sup>

## ANALYSIS

The Board finds that appellant has not established a permanent impairment entitling her to a schedule award. OWCP accepted that she sustained a sprain of the left rotator cuff capsule, a

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<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> 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>10</sup> *See D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

<sup>11</sup> *D.M.*, Docket No. 11-0775 (issued October 11, 2011); *Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>12</sup> *Supra* note 9 at Chapter 2.808.6(a) (February 2013).

<sup>13</sup> *Id.* at Chapter 2.808.6(c).

sprain of the cervical spine ligaments, cervical radiculopathy, unspecified cervical disc displacement, cervical spinal stenosis, and a left shoulder and upper arm acromioclavicular sprain due to an August 1, 2015 employment injury. Appellant underwent a cervical discectomy and fusion at C5-6 on January 3, 2017. Her attending physician, Dr. Singh, found on September 14, 2017 that she had reached MMI and released her to return to her usual employment without restrictions.

On October 3, 2017 appellant filed a schedule award claim. OWCP, on October 5, 2017, requested that she submit an impairment evaluation from her physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant did not, however, submit an impairment evaluation or other medical evidence establishing permanent impairment. Appellant failed to submit any medical evidence establishing a permanent impairment due to her accepted employment injury and thus has not met her burden of proof.<sup>14</sup> She requested that OWCP schedule a second opinion examination, however, as there was no indication of permanent impairment in the record, OWCP denied her claim in accordance with its procedures.<sup>15</sup>

On appeal, appellant contends that she has not reached MMI. MMI means that the physical condition of the injured member of the body has stabilized and will not improve further.<sup>16</sup> As noted, Dr. Singh found that appellant had obtained MMI in his September 14, 2017 report. Once an impairment has reached MMI, a permanent impairment rating may be performed.<sup>17</sup> A schedule award is not payable until MMI has been attained.<sup>18</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 a permanent impairment of either upper extremity entitling her to a schedule award.

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<sup>14</sup> See *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

<sup>15</sup> See *supra* note 13.

<sup>16</sup> See *D.Y.*, Docket No. 16-0987 (issued September 8, 2016).

<sup>17</sup> See *G.G.*, Docket No. 16-1170 (issued November 14, 2016); *Patricia J. Penny-Guzman*, 55 ECAB 757 (2004).

<sup>18</sup> See A.M.A., *Guides* 20, Table 2-1; see also *Orlando Vivens*, 42 ECAB 303 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2018  
Washington, DC

Christopher J. Godfrey, 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