

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

D.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 18-1337
Issued: February 11, 2019**

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 June 25, 2018 appellant filed a timely appeal from a June 7, 2018 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a permanent impairment of a scheduled member or function of the body entitling her to a schedule award.

FACTUAL HISTORY

OWCP accepted that on October 16, 1996 appellant, then a 42-year-old postal employee, sustained a closed-head injury and laceration of the right forehead after she slipped and hit her head while in the performance of duty. Appellant sought treatment for her conditions and was

¹ 5 U.S.C. § 8101 *et seq.*

released to regular unrestricted duty on October 18, 1996. She later retired from her employment in 2000.

By letter dated January 10, 2007, appellant informed OWCP that she was still seeking treatment for her work-related injuries. She submitted medical evidence in support of her claim, documenting neurological treatment for headaches and seizures.

On April 16, 2018 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated April 23, 2018, OWCP advised appellant of the evidence needed to establish her claim. It noted that her claim had been initially accepted for an intracranial injury with open wound of the scalp without complications and a right open wound of the scalp without complications. OWCP explained that additional medical evidence was required from her physician addressing her work-related condition, including an opinion as to whether maximum medical improvement (MMI) had been reached and an impairment rating utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² It afforded appellant 30 days to provide the requested information. No evidence was received.

By decision dated June 7, 2018, OWCP denied appellant's claim for a schedule award, finding that she had not submitted any medical evidence establishing permanent impairment of a scheduled member or function of the body.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.³ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be 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.⁴

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁵ The Board has approved the use by OWCP of the A.M.A., *Guides*

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

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

⁵ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (March 2017).

for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁶

It is the claimant's burden of proof to establish that he or she has sustained a permanent impairment of a scheduled member or function of the body as a result of an employment injury.⁷ 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 (date of MMI), 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*.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body entitling her to a schedule award.⁹

OWCP accepted appellant's 1996 claim for closed-head injury and right forehead laceration. On April 16, 2018 appellant filed a claim for a schedule award. She has not submitted evidence to establish that, as a result of her employment injury, she sustained permanent impairment to a scheduled member or function of the body such that she would be entitled to a schedule award. By letter dated April 23, 2018, OWCP informed appellant of the type of evidence necessary to establish her schedule award claim and specifically requested that she submit an impairment evaluation from her attending physician in accordance with the sixth edition of the A.M.A., *Guides*. Appellant did not respond.

The Board notes that it is appellant's burden of proof to establish a permanent impairment of a scheduled member or function of the body as a result of an employment injury.¹⁰ The medical evidence must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.¹¹ Appellant did not submit such evidence and, thus, she did not meet her burden of proof to establish her schedule award claim.¹²

⁶ *Isidoro Rivera*, 12 ECAB 348 (1961).

⁷ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (March 2017).

⁹ *D.T.*, Docket No. 17-0102 (issued April 13, 2017).

¹⁰ *Supra* note 7.

¹¹ *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

¹² *R.H.*, Docket No. 17-1069 (issued June 6, 2018); *V.W.*, Docket No. 09-2026 (issued February 16, 2010).

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 met her burden of proof to establish a permanent impairment of a scheduled member or function of the body entitling her to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2019
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