



## ISSUE

The issue is whether appellant has met her burden of proof to establish that her June 6, 2018 schedule award should have been paid at an augmented compensation rate.

## FACTUAL HISTORY

On August 7, 2014 appellant, then a 31-year-old casual mail handler, filed a traumatic injury claim (Form CA-1) alleging when processing mail she fractured her right ring finger while in the performance of duty. She stopped work that day. Appellant listed no dependents on her claim form. On August 12, 2014 Dr. Daniel J. Murphy, a Board-certified orthopedic surgeon, diagnosed proximal phalanx fracture of the right fourth finger. He performed closed reduction of the fracture and applied splints and taping. Appellant returned to work on August 14, 2014. OWCP accepted the claim for closed fracture of ring finger, right.

On March 6, 2017 appellant filed a schedule award claim (Form CA-7). She listed no dependents on her claim form. The employing establishment indicated that she had resigned on February 2, 2015.

In support of her schedule award claim, appellant submitted a March 16, 2017 report in which Dr. Kevin Scott, a Board-certified orthopedic surgeon, noted full range of motion (ROM) of all finger joints. He diagnosed status post pathological fracture of the proximal phalanx of the right fourth finger and advised that she had reached maximum medical improvement (MMI). Dr. Scott advised that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>3</sup> appellant had a Class 1 impairment under Table 15-2, Digit Regional Grid. He applied grade modifiers and concluded that she had six percent permanent impairment due to her right finger fracture.

OWCP referred the record, including Dr. Scott's report, to Dr. Michael M. Katz, a Board-certified orthopedic surgeon, acting as OWCP's district medical adviser (DMA). In an August 5, 2017 report, Dr. Katz agreed with Dr. Scott's application of the A.M.A., *Guides*, concluding that appellant had six percent right ring finger impairment, and that the date of MMI was March 16, 2017, the date of Dr. Scott's examination on which the impairment rating was based.<sup>4</sup>

By decision dated June 6, 2018, OWCP granted appellant a schedule award for six percent impairment of the right ring finger, fourth digit. The date of MMI was noted as March 16, 2017. The award ran for 0.9 weeks, from March 16, to 22, 2017 and appellant was compensated at the 66 $\frac{2}{3}$  basic rate, based on her date-of-injury pay rate.

On June 12, 2018 appellant, through counsel, requested a hearing before an OWCP hearing representative. She submitted a New York State certificate of marriage registration, noting that she was married on September 3, 2017.

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</sup> The DMA noted that Dr. Scott described full ROM of all finger joints.

At the hearing, held on November 14, 2018, counsel advised that appellant was not objecting to the percentage of the schedule award, but that she should have been compensated at the augmented, 75 percent, rate. He maintained that, since appellant married in 2017 and the schedule award was issued in 2018, the augmented rate should apply.

By decision dated January 17, 2019, an OWCP hearing representative noted that appellant did not disagree with the percentage of the schedule award, but asserted that she was entitled to be compensated at the augmented rate. The hearing representative noted that the period of the schedule award was March 16 to 22, 2017 and appellant married on September 3, 2017. The hearing representative therefore affirmed the June 6, 2018 decision as appellant was not entitled to augmented compensation during the period of the schedule award.

### **LEGAL PRECEDENT**

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.<sup>5</sup> If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66<sup>2</sup>/<sub>3</sub> percent of his or her monthly pay, which is known as basic compensation for total disability.<sup>6</sup> Under section 8110 of FECA, an employee is entitled to compensation at the augmented rate of three-quarters of his or her weekly pay if he or she has one or more dependents.<sup>7</sup> Section 10.405 of OWCP's regulations provides that dependents include a wife or husband.<sup>8</sup>

OWCP's regulations at 20 C.F.R. § 10.404(c) provide that compensation for schedule awards is payable at 66<sup>2</sup>/<sub>3</sub> percent of the employee's pay, or 75 percent of the pay when the employee has at least one dependent.<sup>9</sup> It is well established that the period during which a schedule award is payable commences on the date that the employee reaches MMI from the residuals of the accepted employment injury.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish that her June 6, 2018 schedule award should have been paid at an augmented compensation rate.

Appellant did not challenge OWCP's finding of six percent permanent impairment of the right ring finger. Rather, she disagreed with the compensation rate, asserting that she was entitled

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8105(a).

<sup>7</sup> *Id.* at § 8110.

<sup>8</sup> 20 C.F.R. § 10.405.

<sup>9</sup> *Id.* at § 10.404(c).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.100(2)(c) (January 2010); *see also R.M.*, Docket No. 18-1313 (issued April 11, 2019); *C.J.*, Docket No. 08-2429 (issued August 3, 2009).

to an augmented compensation rate based on a qualified dependent because she was married at the time the schedule award was issued on June 6, 2018.

The record indicates that appellant married on September 3, 2017. However, the schedule award was payable as of the date of MMI. The date of MMI was March 16, 2017 and the period of the award ran from March 16 to 22, 2017. OWCP's hearing representative correctly concluded that compensation rate for augmented compensation was determined as of the date of MMI.<sup>11</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 met her burden of proof to establish that her June 6, 2018 schedule award should have been paid at an augmented compensation rate.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> *Id.*