



Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUE**

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

### **FACTUAL HISTORY**

On August 21, 2015 appellant, then a 31-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 19, 2015 she injured her left calf when a dog bit her while she was in the performance of duty. OWCP accepted the claim for a puncture wound to the left lower leg. It paid wage-loss compensation for intermittent time lost from work in October 2015.<sup>5</sup>

On October 20, 2017 appellant filed a claim for a schedule award (Form CA-7).<sup>6</sup>

In a development letter dated November 2, 2017, OWCP requested that appellant submit an impairment evaluation from her physician addressing whether she had reached maximum medical improvement (MMI) and evaluating the extent of permanent impairment, if any, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>7</sup>

Thereafter, OWCP received reports dated June 29, 2017 through June 19, 2018 from Dr. Matthew M. Richlen, Board-certified in family medicine. Dr. Richlen diagnosed RSD/CRPS and provided work restrictions.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that following the April 22, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>5</sup> By decision dated April 8, 2016, OWCP denied appellant's claim for wage-loss compensation from October 28 to 30, 2015. It found that the medical evidence was insufficient to establish disability from employment during the claimed period.

<sup>6</sup> By decision dated June 7, 2016, OWCP denied appellant's claim for a recurrence of disability. By decision dated November 22, 2016, an OWCP hearing representative affirmed the June 7, 2016 decision. He further found that the medical evidence was insufficient to support that appellant had sustained RSD due to her accepted employment injury. By decision dated March 24, 2017, OWCP denied modification of its November 22, 2016 decision. By decision dated September 27, 2017, it denied modification of its March 24, 2017 decision. By decision dated August 30, 2018, OWCP denied modification of its September 27, 2017 decision.

<sup>7</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

Appellant further submitted reports dated August 30 and November 1, 2017 from Dr. Steven James Donatello, a Board-certified anesthesiologist, who diagnosed RSD/CRPS and recommended a spinal cord stimulator.

By decision dated October 11, 2018, OWCP denied appellant's schedule award claim finding that she had not submitted medical evidence addressing the relevant issue of whether she had reached MMI.

On October 19, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On October 22, 2018 Dr. Richlen diagnosed RSD/CRPS and provided work restrictions.

A telephonic hearing was held on March 8, 2019. Appellant described her continued problems with her left leg. Counsel requested that OWCP hold the record open for 30 days for the submission of an impairment evaluation.

By decision dated April 22, 2019, OWCP's hearing representative affirmed the October 11, 2018 decision. She found that appellant had not submitted evidence supporting that she had reached MMI or that she had sustained a permanent impairment causally related to her accepted employment injury.<sup>8</sup>

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>9</sup> and its implementing federal regulation,<sup>10</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 loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.<sup>11</sup> The Board has approved the use by OWCP

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<sup>8</sup> OWCP's hearing representative noted that the case was currently accepted for a dog bite, but that the Board had instructed OWCP to further develop the issue of whether appellant had sustained RSD/CRPS due to her accepted employment injury.

<sup>9</sup> *Supra* note 3.

<sup>10</sup> 20 C.F.R. § 10.404.

<sup>11</sup> For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6<sup>th</sup> ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.<sup>12</sup>

A claimant has the burden of proof under FECA to establish 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>13</sup> Before the A.M.A., *Guides* can be utilized a description of impairment must be obtained from his or her 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>14</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>15</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 CE [claims examiner] may proceed with a formal denial of the award."<sup>16</sup>

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.<sup>17</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 (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*.<sup>18</sup>

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<sup>12</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>13</sup> *See M.G.*, Docket No. 19-0823 (issued September 17, 2019); *I.T.*, Docket No. 18-1049 (issued December 31, 2018).

<sup>14</sup> *K.F.*, Docket No. 18-1517 (issued October 9, 2019); *A.T.*, Docket No. 18-0864 (issued October 9, 2018).

<sup>15</sup> *Supra* note 11 at Chapter 2.808.6(a) (March 2017).

<sup>16</sup> *Supra* note 11 at Chapter 2.808.6(c).

<sup>17</sup> *D.F.*, Docket No. 18-1337 (issued February 11, 2019).

<sup>18</sup> *Supra* note 11 at Chapter 2.808.4 (March 2017).

## 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, warranting a schedule award.

Appellant submitted medical reports from Dr. Richlen diagnosing RSD/CRPS and providing work restrictions and from Dr. Donatello recommending a spinal cord stimulator trial. However, neither of these physicians addressed whether she had reached MMI or described a permanent impairment due to her accepted puncture wound.<sup>19</sup> As noted, before the A.M.A., *Guides* can be utilized a description of impairment must be obtained from the claimant's physician. 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.<sup>20</sup> 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>21</sup>

The Board finds that the medical reports of record do not establish that appellant's accepted puncture wound had reached MMI, do not describe the impairment in sufficient detail so that it can be visualized on review, and do not compute the percentage of impairment in accordance with the A.M.A., *Guides*.<sup>22</sup> On November 2, 2017 OWCP requested that she submit a medical opinion addressing whether she had reached MMI and the extent of permanent impairment; however, she did not provide such a rating. Accordingly, the Board finds that appellant has not met her burden of proof to establish her schedule award claim.<sup>23</sup>

Appellant may request a schedule award or increased schedule award 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 permanent impairment of a scheduled member or function of the body, warranting a schedule award.

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<sup>19</sup> See *K.F.*, Docket No. 18-1517 (issued October 9, 2019).

<sup>20</sup> See *S.W.*, Docket No. 19-1078 (issued January 9, 2020).

<sup>21</sup> *K.F.*, *supra* note 19; *A.T.*, Docket No. 18-0864 (issued October 9, 2018).

<sup>22</sup> *C.T.*, Docket No. 18-0257 (issued May 21, 2019).

<sup>23</sup> *D.F.*, *supra* note 17.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board