

ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of her right lower extremity, warranting a schedule award.

FACTUAL HISTORY

On August 18, 2011 appellant, a 51-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that, on that day, she injured her knees, ankles, and hands when her foot got caught by a patient's scooter, while in the performance of duty. She did not stop work. OWCP accepted the claim for right knee and leg sprains. On February 24, 2015 appellant underwent OWCP-authorized right knee arthroscopy with chondroplasty, for a postoperative diagnosis of right knee chondromalacia. OWCP paid her wage-loss compensation on its supplemental rolls effective February 24, 2015 and on its periodic rolls effective July 26, 2015. Appellant's treating physician recommended total right knee arthroplasty. Following development of the claim, by decisions dated February 22 and May 15, 2018, OWCP denied authorization for total right knee arthroplasty.

On August 7, 2019 appellant filed a claim for a schedule award (Form CA-7) due to her accepted employment conditions.

In an August 14, 2019 development letter, OWCP advised appellant that no medical evidence was submitted in support her schedule award claim and requested that she submit a report from her attending physician which addressed whether she had reached maximum medical improvement (MMI), and if so to evaluate permanent impairment in accordance with the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ It afforded her 30 days to submit the necessary evidence.

Appellant did not respond to OWCP's development letter regarding her requested schedule award.⁴

By decision dated September 17, 2019, OWCP denied appellant's claim for a schedule award as the medical evidence failed to establish that her condition was at MMI. It noted that the medical records in her case file had not been updated since 2017. OWCP concluded, therefore, that the requirements had not been met to establish entitlement to a schedule award.

On October 17, 2019 appellant requested reconsideration.

In an October 1, 2019 report, Dr. Harold Rees, a Board-certified orthopedic surgeon, noted that appellant had been under his care for osteoarthritis of the right knee, aggravated by an employment-related strain that occurred in 2011. He advised that she was at MMI as she was utilizing medication and not proceeding with the previously prescribed knee replacement.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ In an August 19, 2019 memorandum of a telephone call (Form CA-110), appellant indicated that she was not interested in additional right knee surgery.

Dr. Rees indicated that he was not trained to provide impairment ratings. He reported, however, that appellant was unable to return to work because she reported pain that caused her significant distress, even at rest.

By decision dated October 30, 2019, OWCP denied modification of its prior decision finding that the medical evidence of record did not demonstrate a measurable permanent impairment of her right lower extremity.

LEGAL PRECEDENT

The schedule award provisions of FECA⁵ and its implementing regulations⁶ 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. FECA, however, does not specify the manner in which the percentage of loss of a member 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 and the Board has concurred in such adoption.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.⁸

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.⁹ 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*.¹⁰ Its procedures further provide that, if a claimant has not submitted a permanent impairment evaluation, it should request a detailed report that includes a discussion of how the impairment rating was calculated.¹¹ 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.¹²

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ *T.K.*, Docket No. 19-1222 (issued December 2, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁰ *Supra* note 8 at Chapter 2.808.5 (March 2017).

¹¹ *Id.* at Chapter 2.808.6(a) (March 2017).

¹² *Id.* at Chapter 2.808.6(c).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her right lower extremity, warranting a schedule award.

Appellant provided an October 1, 2019 report from Dr. Rees, who advised that appellant was at MMI utilizing medication and without proceeding with the prescribed knee replacement surgery. Dr. Rees failed, however, to provide an assessment of her permanent impairment to the right lower extremity, noting that he was not trained in providing impairment ratings. As such, his report is insufficient to establish entitlement to a schedule award.¹³

OWCP procedures provide that, to support a schedule award, the file must contain medical evidence which shows that the impairment has reached a permanent and fixed state, 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 permanent impairment in accordance with the A.M.A., *Guides*.¹⁴ Although OWCP requested a medical opinion establishing the extent of appellant's permanent impairment, the evidence submitted does not contain an impairment rating in accordance with the A.M.A., *Guides*. Thus, there is no current medical evidence of record supporting that appellant has ratable permanent impairment of her right lower extremity. The Board finds, therefore, that she has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.¹⁵

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 permanent impairment of her right lower extremity, warranting a schedule award.

¹³ See *T.D.*, Docket No. 17-1495 (issued January 4, 2018).

¹⁴ *Supra* note 8 at Chapter 2.808.5 (March 2017).

¹⁵ See *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *I.R.*, Docket No. 16-1796 (issued January 13, 2017); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 30, 2020
Washington, DC

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

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

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