



## **FACTUAL HISTORY**

On April 26, 2018 appellant, then a 57-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 20, 2018 she sustained injuries to her right ankle, right hip, and right upper side of her body when she tripped over a hand truck bed while in the performance of duty. On April 23, 2018 she was released to modified-duty work. OWCP accepted her claim for “strain of unspecified muscle, fascia and tendon at shoulder and upper arm level, right arm, initial encounter.”

On January 29 and April 4, 2019 appellant filed a claim for a schedule award (Form CA-7) and submitted progress reports and office visit notes dated January 29 to April 22, 2019 by Dr. Gordon Avery, a Board-certified orthopedic surgeon. Dr. Avery recounted that she still complained of pain and weakness in her right shoulder due to an April 20, 2018 employment injury. Upon examination of the right shoulder, he observed full range of motion (ROM) and no acromioclavicular (AC) joint tenderness. Speed’s and impingement signs were positive. Dr. Avery diagnosed right shoulder impingement syndrome, partial tear of the right rotator cuff, tendinopathy of the right biceps tendon, osteoarthritis of the right glenohumeral joint, and Hill Sachs deformity.

In a development letter dated April 12, 2019, 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>3</sup> It afforded her 30 days to submit the requested information.

By decision dated July 26, 2019, OWCP denied appellant’s schedule award claim finding that she had not submitted medical evidence to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On August 15, 2019 appellant requested reconsideration. She noted that she had relevant evidence to show that her April 20, 2018 employment injury was ongoing and that she had reached MMI.

In support of her request, appellant submitted a March 12, 2019 letter from Dr. Avery, who recounted that he had treated her since November 27, 2018 for a work injury sustained on April 20, 2018. Dr. Avery noted that she had been managed conservatively, but may require surgery. He reported diagnoses of right shoulder impingement syndrome, partial tear of the right rotator cuff, right biceps tendon tendinopathy, right glenohumeral joint osteoarthritis, and Hill Sachs deformity. In progress reports dated March 12 to September 17, 2019, Dr. Avery provided examination findings and reiterated the diagnosed conditions. In an April 22, 2019 progress note, he indicated that appellant had reached MMI.

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

In a July 2, 2019 note, Dr. Avery again indicated that appellant had reached MMI on April 22, 2019. He opined, however, that there was no permanent partial impairment on the basis of this injury.

OWCP also received duty status reports (Forms CA-17) dated April 1 and September 17, 2019 by Dr. Avery, who indicated that appellant could work modified duty.

By decision dated November 20, 2019, OWCP denied modification of the July 26, 2019 decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>4</sup> and its implementing federal regulations,<sup>5</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. 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, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants.<sup>6</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.<sup>7</sup> The Board has approved the use by OWCP 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>8</sup>

A claimant has the burden of proof under FECA to establish permanent impairment of a scheduled member or function of the body as a result of his or her employment injury entitling him or her to a schedule award.<sup>9</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>10</sup>

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also id.* Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> *D.S.*, Docket No. 18-1140 (issued January 29, 2019); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>9</sup> *See M.G.*, Docket No. 19-0823 (issued September 17, 2019); *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>10</sup> *K.F.*, Docket No. 18-1517 (issued October 9, 2019); *A.T.*, Docket No. 18-0864 (issued October 9, 2018).

OWCP's 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>11</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>12</sup>

### 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.

In support of her schedule award claim, appellant submitted medical reports, letters, and Form CA-17 reports from Dr. Avery dated January 29 to September 17, 2019. Dr. Avery noted her continued complaints of right shoulder pain and weakness after an April 20, 2018 job injury. He provided examination findings and diagnosed right shoulder impingement syndrome, partial tear of the right rotator cuff, right biceps tendon tendinopathy, right glenohumeral joint osteoarthritis, and Hill Sachs deformity. In an April 22, 2019 progress note and July 2, 2019 letter, Dr. Avery indicated that appellant had reached MMI. Although he opined that she had reached MMI, he did not describe a permanent impairment due to her accepted April 20, 2018 employment injury.<sup>13</sup> As noted, an impairment 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>

The Board finds that none of the medical reports submitted are sufficient to establish permanent impairment of a scheduled member or function of the body causally related to the April 20, 2018 employment injury.<sup>15</sup> The medical reports of record do not describe appellant's impairment in sufficient detail so that it can be visualized on review and do not compute a percentage of impairment in accordance with the A.M.A., *Guides*.<sup>16</sup> Accordingly, the Board finds that appellant has not met her burden of proof to establish her schedule award claim.

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<sup>11</sup> *Supra* note 7 at Chapter 2.808.5 (March 2017).

<sup>12</sup> *Id.*, at Chapter 2.808.6(c) (March 2017).

<sup>13</sup> *See K.J.*, Docket No. 19-1492 (issued February 26, 2020); *see also D.F.*, *supra* note 9.

<sup>14</sup> *Supra* note 10.

<sup>15</sup> *See C.T.*, Docket No. 18-0257 (issued May 21, 2019).

<sup>16</sup> *Supra* note 11.

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 a scheduled member or function of the body, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board