

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

_____)	
T.H., Appellant)	
)	
and)	Docket No. 19-1066
)	Issued: January 29, 2020
U.S. POSTAL SERVICE, NEWBURG STATION, Cleveland, OH, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 15, 2019 appellant, through counsel, filed a timely appeal from a March 12, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

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 September 19, 2016 appellant, then a 21-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging on September 16, 2016 she injured her back and chest in a motor vehicle accident (MVA) while in the performance of duty. By decision dated November 23, 2016, OWCP accepted the claim for sprain of the lumbar spine, low back strain, and bilateral knee contusions. Appellant returned to modified-duty work on January 21, 2017.

On February 3, 2017 appellant's physician, Dr. Catherine Watkins Campbell, Board-certified in occupational medicine, released her to full-duty work. She reported that appellant exhibited a normal gait, normal lumbar lordosis, and no muscle spasm on palpation. Dr. Campbell found that she had negative straight leg raising, no soft tissue or spinal tenderness, and no trigger points. She also found a negative Patrick's test bilaterally. Dr. Campbell attributed appellant's mechanical back pain issues to her scoliosis and determined that the injuries from the September 16, 2016 work-related MVA were no longer an issue. In a note dated March 28, 2017, she found that appellant had reached maximum medical improvement (MMI). Dr. Campbell noted that due to appellant's scoliosis she had mechanical back pain issues which had increased her healing time.

On April 27, 2017 appellant filed a schedule award claim (Form CA-7).

In a May 22, 2017 development letter, OWCP advised appellant of the deficiencies of her claim, and requested medical evidence containing a detailed description of her permanent impairment specific to the accepted work-related conditions, a date of MMI, a final rating of permanent impairment, and a discussion of the rationale for calculation of the impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)³ supporting appellant's schedule award claim. It afforded her 30 days to respond.

In an October 31, 2017 report, Dr. Campbell listed appellant's accepted conditions and noted her history of injury on September 16, 2016. She provided results on physical examination including range of motion of the bilateral knees of 135 degrees of flexion, and 3 degrees of extension in the left knee, with -2 degrees of extension in the right knee which were not ratable under Table 16-23, page 549 of the A.M.A., *Guides*. Dr. Campbell found no swelling, effusion, or tenderness in either knee. She reported normal reflexes and motor examination in the lower extremities as well as negative straight leg raising and negative Patrick's tests, bilaterally. Dr. Campbell reported that appellant was at MMI and found that lumbosacral strain/sprains were not ratable conditions and that appellant had no residuals from her bilateral knee contusions. She

³ A.M.A., *Guides* (6th ed. 2009).

concluded that in accordance with the A.M.A., *Guides* appellant had zero percent permanent impairment of the bilateral lower extremities.

On April 30, 2018 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed a statement of accepted facts and the medical evidence of record. He concurred with Dr. Campbell's assessment that appellant had reached MMI and that she had zero percent permanent impairment of the bilateral lower extremities. The DMA also explained that regarding appellant's accepted lumbar condition, appellant did not have any sensory or motor deficit, and therefore she did not have a ratable permanent impairment under *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009) (*The Guides Newsletter*), proposed Table 2: Spinal Nerve Impairment: Lower Extremity Impairments. In a report dated August 2, 2018, the DMA clarified that August 31, 2017, the date Dr. Campbell examined appellant, was the date of MMI.

By decision dated August 7, 2018, OWCP denied appellant's schedule award claim finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On August 13, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

During the hearing, held on January 15, 2019, appellant testified that she continued to experience knee pain and locking. She also reported numbness in her knee. OWCP's hearing representative afforded appellant 30 days to submit medical evidence. No further evidence was received.

By decision dated March 12, 2019, OWCP's hearing representative affirmed the August 7, 2018 decision, finding that there was no medical evidence of record establishing permanent impairment of a scheduled member or function of the body, warranting a schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁴ and its implementing federal regulations,⁵ 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 of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.⁸ 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, 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*.⁹

Neither FECA nor its regulations provide for a schedule award for impairment to the back or to the body as a whole.¹⁰ Furthermore, the back is specifically excluded from the definition of organ under FECA.¹¹ The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter* is to be applied.¹² The Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.¹³

The claimant has the burden of proof to establish that the condition for which a schedule award is sought is causally related to his or her federal employment.¹⁴

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁹ *Supra* note 7 at Chapter 2.808.5 (March 2017); *see also B.J.*, Docket No. 19-0960 (issued October 7, 2019).

¹⁰ *K.Y.*, Docket No. 18-0730 (issued August 21, 2019); *L.L.*, Docket No. 19-0214 (issued May 23, 2019); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

¹¹ *See* 5 U.S.C. § 8101(19); *see also G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹² *Supra* note 7 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

¹³ *E.D.*, Docket No. 13-2024 (issued April 24, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

¹⁴ *G.S.*, *supra* note 11; *Veronica Williams*, 56 ECAB 367 (2005).

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 her October 31, 2017 report, appellant's attending physician, Dr. Campbell, reported that appellant had normal reflexes and motor examination in the lower extremities as well as negative straight leg raising and negative Patrick's tests, bilaterally. She opined that appellant had reached maximum medical improvement, and that appellant had no residuals from her bilateral knee contusions and zero percent permanent impairment of her knees. Dr. Campbell also indicated that appellant was at MMI and found that appellant's lumbosacral strain/sprains were not ratable conditions.¹⁵ She explained that appellant had normal sensory and motor lower extremity examination findings. Dr. Campbell's report negates permanent impairment and is therefore insufficient to establish appellant's schedule award claim.¹⁶

In accordance with its procedures, OWCP properly routed the case record to its DMA who concurred with Dr. Campbell's findings. The Board finds that the DMA applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Campbell's clinical findings. The DMA properly concluded that there is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides* demonstrating a percentage of permanent impairment of appellant's knees. He also properly explained that the evidence of record did not establish a sensory or motor deficit of appellant's lumbar spine, resulting in a lower extremity permanent impairment, pursuant to *The Guides Newsletter*.¹⁷ The Board finds that the DMA in this case properly applied the standards of the A.M.A., *Guides* and OWCP properly relied on his assessment of zero percent permanent impairment of the right and left lower extremity.

Appellant has submitted no other current medical evidence in conformance with the sixth edition of the A.M.A., *Guides*, or *The Guides Newsletter*, addressing how she has a ratable permanent impairment of a scheduled body member. Accordingly, the Board finds that she has not established her schedule award claim.

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.

¹⁵ *F.T.*, Docket No. 16-1326 (issued March 12, 2018).

¹⁶ *L.G.*, Docket No. 16-0792 (issued June 24, 2016) (the Board held that when a medical report finds no permanent impairment it is insufficient to establish a claim for a schedule award).

¹⁷ *T.K.*, Docket No. 19-1222 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2020
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