

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

_____)	
W.F., Appellant)	
)	
and)	Docket No. 20-0698
)	Issued: November 10, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Cochranton, PA, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 10, 2020 appellant filed a timely appeal from an August 12, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's August 12, 2019 decision was Saturday, February 8, 2020. Because the last day of the 180-day filing period fell on a Saturday, the filing period is extended until the close of the next business day, which was Monday, February 10, 2020. Accordingly, the appeal is timely filed pursuant to 20 C.F.R. § 501.3(f)(2).

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On February 8, 2018 appellant, then a 62-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a right shoulder condition due to factors of his federal employment including performing repetitive and arduous duties and handling extra parcels during the Christmas season. He noted that he first became aware of his condition on December 22, 2017, and realized it was causally related to his federal employment on January 11, 2018. Appellant stopped work on December 22, 2017. On October 16, 2018 OWCP accepted his claim for the conditions of right rotator cuff tear and impingement syndrome of the right shoulder. It authorized arthroscopic surgery on the right shoulder which was performed on April 18, 2018.³

On October 22, 2018 appellant filed a claim for a schedule award (Form CA-7).

In an November 6, 2018 development letter, OWCP advised appellant that no medical evidence was submitted in support of his schedule award claim and requested that he submit a report from his attending physician which addressed whether he 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*).⁴ It afforded him 30 days to submit the necessary evidence.

In response to OWCP's development letter, appellant submitted a December 1, 2018 report from Dr. Bryan P. Hooks, a Board-certified orthopedist, who noted his history of treatment of appellant and examination findings. Dr. Hooks explained, however, that appellant was not at MMI and that he was unable to provide impairment rating report.

By decision dated January 28, 2019, OWCP denied appellant's schedule award claim.

Dr. Hooks treated appellant on November 26, 2018, reporting no improvement in his condition. He noted strength for abduction was 5/5 on the left and 5-/5 on the right side; external rotation was 5/5 on the left and 5-/5 on the right; internal rotation was 5/5 bilaterally; range of motion on the right for forward flexion was 50 degrees, external rotation was 20 degrees, internal rotation was to L2; and Hawkins-Kennedy impingement test was positive bilaterally. Dr. Hooks opined that appellant could achieve improved function if he were to consider a reverse total shoulder arthroplasty.

³ A magnetic resonance imaging (MRI) scan of the right shoulder dated January 16, 2018 had revealed a massive rotator cuff tear affecting the entirety of supraspinatus and infraspinatus with mild atrophy, high-grade partial thickness, partial-width tear of subscapularis with intraarticular biceps dislocation, severe biceps tendinosis with low-grade partial tearing, inferior and posterior labral tears, joint effusion and bursitis.

⁴ A.M.A., *Guides* (6th ed. 2009).

In a letter dated and postmarked February 22, 2019, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on June 11, 2019. No additional evidence was received.

By decision dated August 12, 2019, OWCP denied modification of its prior decision.

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 his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

Appellant provided reports from Dr. Hooks dated November 26 and December 1, 2018, who opined that appellant reached full capacity. However, Dr. Hooks did not place appellant at MMI. He advised that the only way appellant could achieve MMI would be to consider a reverse total shoulder arthroplasty. OWCP procedures provide that MMI must be reached before a schedule award is made.¹³ As noted above, MMI is determined to be a point where no further improvement is anticipated and symptoms are expected to remain stable.¹⁴ Therefore, the Board finds it premature to consider a schedule award in this case.

On appeal appellant asserts that he had to retire early because of his accepted right shoulder injury and should have been paid a schedule award for the lost income.¹⁵ As noted above, there is no current medical evidence of record confirming that appellant has reached MMI.¹⁶ Therefore, appellant has not met his burden of proof.

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 his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

¹³ *Supra* note 8 at Chapter 2.808.5 (March 2017).

¹⁴ *Id.*

¹⁵ To the extent that appellant is claiming entitlement to wage-loss compensation due to disability from work, as opposed to a schedule award, he should properly file a completed Form CA-7).

¹⁶ *Supra* note 8 at Chapter 2.808.5 (March 2017).

ORDER

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

Issued: November 10, 2020
Washington, DC

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

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

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