

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

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JANICE DANIELS, Appellant)	
)	
and)	Docket No. 20-0535
)	Issued: October 30, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 10, 2020 appellant filed a timely appeal from a July 17, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

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.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 17, 2019 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 21, 2006 appellant, then a 49-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained an umbilical hernia on November 21, 2003 when lifting tubs of mail while in the performance of duty. OWCP assigned the claim File No. xxxxxx861 and accepted the claim on June 10, 2009 for precipitation of a preexisting umbilical hernia. Under OWCP File No. xxxxxx608, it accepted that appellant sustained an umbilical hernia on December 8, 2004, which required surgical repair. OWCP expanded acceptance of the claim under File No. xxxxxx608 to include a pelvic sprain. It administratively combined the two claims under File No. xxxxxx861.

On November 21, 2008 appellant filed a claim for a schedule award (Form CA-7) for lower extremity impairment related to the accepted umbilical hernias. OWCP denied the claim by decision dated September 15, 2014. Following a hearing, an OWCP hearing representative issued an April 17, 2015 decision, denying appellant's schedule award. Appellant appealed to the Board. By decision dated February 10, 2016,⁴ the Board affirmed the April 17, 2015 decision, as the medical evidence of record failed to demonstrate permanent impairment of a scheduled member causally related to the accepted umbilical hernias.

On February 6, 2017 appellant requested reconsideration. She contended that OWCP failed to consider the totality of her claims. Appellant provided an August 1, 2008 operative report by Dr. Megan App, a Board-certified obstetrician and gynecologist, who performed a diagnostic hysteroscopy, dilatation and curettage, and thermal endometrial ablation to treat endometrial polyps. She also submitted a June 2016 computerized tomography (CT) scan of the chest and magnetic resonance imaging (MRI) scans of the abdomen, cervical spine, thoracic spine, and lumbar spine. Appellant also provided copies of evidence previously of record.

By decision dated April 19, 2017, OWCP denied appellant's schedule award claim finding that the evidence submitted on reconsideration did not contain sufficient medical rationale supporting that the accepted umbilical hernias had caused permanent impairment of a scheduled member of the body. Appellant appealed to the Board.

During the pendency of the prior appeal, appellant submitted a June 10, 2016 CT scan demonstrating a supraumbilical hernia with evidence of surgical repair, an April 24, 2017 letter asserting recurrence of an abdominal hernia, and a July 20, 2017 order by Dr. Samuel Chmell, a Board-certified orthopedic surgeon, for imaging studies of the right upper and lower extremities.

³ Docket No. 18-0073 (issued April 23, 2018); Docket No. 15-1768 (issued February 10, 2016); Docket No. 08-0962 (issued August 13, 2008).

⁴ Docket No. 15-1768 (issued February 10, 2016).

She also provided copies of evidence of record considered by the Board in its February 10, 2016 decision.

By decision dated April 23, 2018,⁵ the Board affirmed OWCP's April 19, 2017 decision as the medical evidence of record failed to demonstrate permanent impairment of a scheduled member of the body causally related to the accepted umbilical hernias.

On April 22, 2019 appellant requested reconsideration. She contended that OWCP should not have relied on the January 8, 2009 second opinion report of Dr. Daniel J. Deziel, a Board-certified surgeon as he had examined her only after the August 1, 2008 surgery had resolved her uterine condition. Appellant also contended that OWCP had not fully considered the totality of her claims, including a March 25, 2005 pelvic strain, and aggravation of bilateral hip osteoarthritis accepted under File No. xxxxxx862. She provided an incomplete March 30, 2005 report, with an April 4, 2005 addendum by Dr. Maria Albright, a Board-certified family practitioner, who noted appellant's complaints of nausea, fatigue, dry cough, and possible occupational exposure to dust or fumes. Appellant also reported heavy menstruation since July 2004.⁶

By decision dated July 17, 2019, OWCP denied modification of the prior schedule award determination as the medical evidence submitted in support of her request for reconsideration did not address the issue of permanent impairment.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁷ and its implementing federal regulations,⁸ 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 impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants and the Board has concurred in such adoption.⁹ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹⁰

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

⁵ Docket No. 18-0073 (issued April 23, 2018).

⁶ Appellant also submitted copies of evidence previously of record.

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.*; see *V.J.*, Docket No. 1789 (issued April 8, 2020); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 4 (January 2010).

him or her to a schedule award.¹¹ 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.¹²

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.

Preliminarily, the Board notes that it is unnecessary to consider the evidence that was previously considered in its April 23, 2018 decision. Findings made in prior Board decisions are *res judicata*, absent any further review by OWCP under section 8128 of FECA.¹³

In a March 30, 2005 report and April 4, 2005 addendum, Dr. Albright related appellant's respiratory complaints and noted that appellant experienced heavy menstruation since July 2004. However, he did not reference a permanent impairment due to the accepted umbilical hernias. The Board also notes that only the first page of a multi-page report is included in the case record. There are no findings on examination or diagnoses in the portion of the report included in the imaged case record. As noted, an impairment evaluation made by the attending physician must include a description of the impairment 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.¹⁴

The Board finds that Dr. Albright's report, June 10, 2016 imaging study, and Dr. Chmell's imaging order are not sufficient to establish permanent impairment of a scheduled member or function of the body causally related to the accepted umbilical hernias.¹⁵ The medical reports of record do not reference appellant's claimed impairment and do not compute a percentage of impairment in accordance with the A.M.A., *Guides*.¹⁶ Accordingly, the Board finds that appellant has not met her proof to establish her schedule award claim.

¹¹ *P.B.*, Docket No. 20-0346 (issued July 8, 2020); *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).

¹² *P.B.*, *id.*; *K.F.*, Docket No. 18-1517 (issued October 9, 2019); *A.T.*, Docket No. 18-0864 (issued October 9, 2018).

¹³ *S.Y.*, Docket No. 20-0470 (issued July 15, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

¹⁴ *Supra* note 13.

¹⁵ *P.B.*, *supra* note 12; *see C.T.*, Docket No. 18-0257 (issued May 21, 2019).

¹⁶ *Supra* note 13.

On appeal appellant contends that OWCP failed to consider the totality of her claims. As explained above, the medical evidence of record does not establish a permanent impairment of a scheduled member or function of the body warranting a schedule award.

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 July 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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