



## **FACTUAL HISTORY**

On November 12, 2015 appellant, then a 56-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained a facial injury when the gate of an all-purpose container (APC) fell and hit her on the nose while in the performance of duty. She did not stop work. On June 24, 2016 OWCP accepted appellant's claim for a contusion of the nose, dizziness, and giddiness.

Appellant subsequently submitted a series of medical reports detailing her treatment for her accepted nose contusion, dizziness, and giddiness, as well as additional reports relating to her diagnosis of vertigo, a vestibular disorder, post-concussion syndrome, and tinnitus.

In an April 10, 2017 medical report, Dr. Kenneth Hsu, a Board-certified otolaryngologist, evaluated appellant for hearing loss and intermittent ringing sounds in her ears. He diagnosed other abnormal auditory perceptions, bilateral tinnitus, a concussion without loss of consciousness, and a bilateral impacted cerumen. Dr. Hsu opined that appellant's tinnitus was caused by head trauma.

In a September 13, 2017 medical report, Dr. Rory Allen, Board-certified in family medicine, detailed the history of treatment relating to the accepted November 12, 2015 employment injury. He advised that appellant was evaluated by Dr. Erwin Cruz, a Board-certified neurologist, who noted positive findings regarding post-concussion syndrome and a right vestibular disorder, which he found to be directly related to the employment incident. Based on Dr. Cruz' findings, Dr. Allen requested that the acceptance of appellant's claim be expanded to include his diagnoses, opining that her injury was clearly more than a nose contusion as proven by an abnormal electronystagmography (ENG) study. He diagnosed post-concussion syndrome, a right vestibular disorder, and a nose contusion and opined that her conditions were unequivocally caused by the November 12, 2015 based on his review of the medical evidence.

In a November 19, 2018 medical report, Guadalupe Escamilla, Ph.D., a licensed professional counselor, performed an initial mental health status evaluation to assess the effects of the accepted November 12, 2015 employment injury on appellant's mental state. She recounted the history of the employment incident and subsequent medical treatment. Dr. Escamilla diagnosed an adjustment reaction with depressed mood (injury related). She opined that, based on the available information, appellant's current emotional disturbance was deemed to be related to her injury.

In medical reports dated February 4 and March 19, 2019, Dr. Maushmi Sheth, a Board-certified neurologist, evaluated appellant for symptoms of headache, dizziness, and memory loss as they related to the accepted November 12, 2015 employment incident. She diagnosed a contusion of the nose, occipital neuralgia, headache, right ear tinnitus, dizziness, and giddiness, unsteadiness on feet, a mild cognitive impairment and anxiety disorder.

On March 29, 2019 OWCP routed the case file, along with a statement of accepted facts (SOAF), to Dr. Stephen Mauro, a Board-certified otolaryngologist serving as a district medical adviser (DMA), to opine on whether appellant developed right ear tinnitus and a right vestibular disorder consequential to her accepted work-related injury. In his April 15, 2019 report,

Dr. Maturo reviewed the SOAF and the medical evidence of record. He agreed with Dr. Allen's September 13, 2017 report, explaining that her tinnitus and vestibular disorder were a consequence of her work-related injury. Dr. Maturo explained that tinnitus and vertigo were well documented to be associated with head trauma and that the symptoms of the conditions could last for years in many instances. He recommended that appellant undergo an additional ENG study to objectively document continued right peripheral vestibulopathy.

In an April 16, 2019 progress report, Dr. Allen observed that appellant continued to experience pain, headaches, dizziness, blurred vision, and ringing in her ears related to her employment injury. On evaluation and review of her medical treatment he diagnosed post-concussion syndrome, a contusion of the nose, dizziness, and giddiness. Dr. Allen also diagnosed right ear tinnitus and right ear peripheral vestibular disorder, noting that these conditions were still pending approval. He opined that appellant had not yet reached maximum medical improvement (MMI).

In an April 24, 2019 medical report, Dr. Andrew Prychodko, Board-certified in occupational medicine and rehabilitation, evaluated appellant for possible interdisciplinary functional restoration treatment related to her accepted November 12, 2015 employment injury. He noted her continued symptoms of persistent headaches, dizziness, balance issue, and tinnitus. Dr. Prychodko diagnosed a contusion to the bridge of the nose with subjective reports of post-concussive-type symptomology that had not resolved.

On May 14, 2019 OWCP expanded the acceptance of appellant's claim to include tinnitus right ear and vertigo.

On August 19, 2019 appellant filed a claim for a schedule award (Form CA-7).

In a July 16, 2019 impairment rating evaluation, Dr. Allen reviewed the history of the November 12, 2015 employment injury and appellant's subsequent medical treatment related to her diagnosed conditions. He noted diagnoses of a contusion of the nose, dizziness, and giddiness, post-concussion syndrome, headache, right ear tinnitus, and vertigo and advised that she reached MMI on July 16, 2019. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>3</sup> Dr. Allen determined that appellant's pain disability questionnaire (PDQ) was 78. Using Table 3-1, page 40, he found that she was in the moderate degree of pain-related impairment and afforded one percent whole person impairment. Using the diagnosis-based impairment (DBI) method, Dr. Allen referenced Table 11-4, page 258 of the A.M.A., *Guides*, for vestibular disorders and began with a class two middle default value of 19 percent. He determined that physical examination "findings reveal abnormal Romberg and impairment stays at the middle default of 19 percent." Dr. Allen further reported that diagnostic findings revealed a bi-thermal caloric study of significant unilateral weakness of 80 percent to the right, which was two levels up and resulted in 27 percent whole person impairment. Using appendix A, Combined Values Chart, page 604, Dr. Allen combined the 27 percent whole person impairment for appellant's vestibular disorder and the 1 percent whole person impairment for post-concussion syndrome to arrive at 28 percent whole person impairment.

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

On August 29, 2019 OWCP routed the case record, a SOAF, and Dr. Allen's July 16, 2019 impairment rating to Dr. Arthur Harris, a Board-certified orthopedic surgeon serving as the DMA, for review as to whether appellant sustained permanent impairment as a result of her accepted November 12, 2015 employment injury. In an October 6, 2019 report, Dr. Harris noted his review of the SOAF and medical evidence of record, including Dr. Allen's July 16, 2019 impairment evaluation. He indicated that previous diagnostic studies did not demonstrate any significant abnormalities or neurological deficits. Dr. Harris found that appellant had zero percent impairment of her upper extremities and explained that he was not qualified to comment on Dr. Allen's findings with regard to her whole person impairment.

By decision dated December 3, 2019, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish permanent impairment of a scheduled member due to her accepted work injury.

On February 18, 2020 appellant, through her then-representative, requested reconsideration of OWCP's December 3, 2019 decision. In an attached letter, the then-representative noted that the DMA, Dr. Harris, indicated that he was not qualified to evaluate neurological issues and that OWCP erred by not using the proper specialists to review appellant's request for a schedule award.

By decision dated August 26, 2020, OWCP denied modification of its December 3, 2019 decision.

### **LEGAL PRECEDENT**

The schedule award provisions 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 loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.<sup>6</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>7</sup>

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6<sup>th</sup> ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Chapter 3.700, Exhibit 1 (January 2010).

<sup>7</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or the implementing regulations.<sup>8</sup> The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.<sup>9</sup> Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.<sup>10</sup> Neither FECA nor its regulations provide for a schedule award for impairment of the back or to the body as a whole.<sup>11</sup>

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 employment.<sup>12</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>13</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.

OWCP accepted appellant's claim for a contusion of the nose, dizziness and giddiness, and later expanded the claim to include right ear tinnitus, and vertigo. In his July 16, 2019 report, Dr. Allen, appellant's attending physician, reviewed her medical treatment for her diagnosed conditions and advised that she reached MMI on July 16, 2019. Referencing the sixth edition of the A.M.A., *Guides*, he afforded 1 percent whole person impairment for her post-concussion syndrome and 27 percent whole person impairment for her vestibular disorder. Dr. Allen then combined the two impairment ratings to arrive at 28 percent whole person impairment. Although he found 28 percent whole person impairment due to appellant's post-concussion syndrome and vestibular disorder, FECA, as noted, does not allow schedule awards for a member, function, or organ of the body that is not specified in FECA or the implementing regulations.<sup>14</sup> FECA, does not allow schedule awards for impairment of the body as a whole.<sup>15</sup> Accordingly, Dr. Allen's

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<sup>8</sup> *D.L.*, Docket No. 20-0059 (issued July 8, 2020); *W.C.*, 59 ECAB 374 (2008); *Anna V. Burke*, 57 ECAB 521 (2006).

<sup>9</sup> 5 U.S.C. § 8107(c).

<sup>10</sup> *Id.*

<sup>11</sup> See *J.L.*, Docket No. 18-1380 (issued May 1, 2019). FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

<sup>12</sup> See *G.S.*, Docket No. 18-0827 (issued May 1, 2019).

<sup>13</sup> *Supra* note 6 at Chapter 2.808.6(f) (March 2017).

<sup>14</sup> *Supra* note 8.

<sup>15</sup> See *M.M.*, Docket No. 17-0197 (issued May 1, 2018); *J.G.*, Docket No. 12-0995 (issued October 22, 2012).

whole person impairment rating based on pain-related impairment does not comport with OWCP's procedures and is insufficient to establish any ratable impairment.<sup>16</sup>

OWCP properly routed Dr. Allen's report to its DMA, Dr. Harris.<sup>17</sup> In his October 16, 2019 evaluation, he noted that appellant's diagnostic studies did not demonstrate any significant abnormalities or neurological deficits and determined that she had zero percent impairment of her upper extremities. Dr. Harris also observed that Dr. Allen's evaluation was based on a whole person impairment. As noted above, FECA does not allow schedule awards for impairment of the body as a whole.<sup>18</sup> The Board finds that he properly concluded that she did not have any current impairment as a result of the employment injury.

The additional medical evidence of record is also insufficient to establish permanent impairment of a scheduled member or function of the body, as none of the physicians provided an opinion relative to permanent impairment.<sup>19</sup>

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing a 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.

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<sup>16</sup> See *M.M.*, *id.*

<sup>17</sup> *Supra* note 13.

<sup>18</sup> *Supra* note 15.

<sup>19</sup> 20 C.F.R. § 10.404 (1999); see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 26, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2021  
Washington, DC

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

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

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