

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

C.J., Appellant)	
)	
and)	Docket No. 21-0741
)	Issued: November 23, 2021
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 25, 2021 appellant filed a timely appeal from an August 24, 2020 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.³

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last 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 August 24, 2020, the date of OWCP's decision, was February 20, 2021. As this fell on a Saturday, appellant had until the next business day, Monday, February 23, 2021, to file the appeal. Since using April 1, 2021, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 25, 2021, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the August 24, 2020 decision, OWCP received additional evidence. However, 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.*

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 June 7, 2018 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date a dog bit his right ankle, while he was in the performance of duty. OWCP accepted the claim for a right shoulder contusion and complete right shoulder rotator cuff tear.⁴

On July 21, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award. No medical evidence was provided in support of his claim.

In a July 22, 2020 development letter, OWCP noted that appellant had not provided medical evidence of permanent impairment in support of his schedule award claim. It requested a detailed narrative medical report addressing whether his accepted conditions had reached maximum medical improvement and whether he had any permanent impairment of a scheduled member in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵ It noted that if appellant's physician was unable or unwilling to provide the required report, he should so advise OWCP in writing. OWCP afforded appellant 30 days to provide the requested medical evidence. No response was received.

By decision dated August 24, 2020, OWCP denied appellant's claim for a schedule award, finding that there was no medical evidence to establish that he sustained permanent impairment of a scheduled member or function of the body.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁶ and its implementing federal regulation,⁷ 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 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

⁴ OWCP paid appellant wage-loss compensation on the supplemental rolls from July 23 through November 10, 2018; on the periodic rolls from November 11 through December 8, 2018; and on the supplemental rolls a gain from December 9, 2018 through May 8, 2019.

⁵ A.M.A., *Guides* (6th ed. 2009).

⁶ *Supra* note 2.

⁷ 20 C.F.R. § 10.404.

edition of the A.M.A., *Guides*, published in 2009.⁸ 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.⁹

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.¹⁰ 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*.¹¹

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.

OWCP accepted that appellant sustained a right shoulder contusion and complete rotator cuff tear or rupture of right shoulder. On July 21, 2020 appellant filed a claim for a schedule award.

OWCP on July 22, 2020 requested that appellant submit an impairment evaluation from his physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*. As noted, a claimant must submit an evaluation from a physician that includes a description of 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.¹² Appellant, however, has not submitted any medical evidence establishing permanent impairment of a scheduled member or function of the body due to his accepted conditions. The Board, thus, finds that 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.¹³

⁸ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁹ *K.J.*, Docket No. 19-1492 (issued February 26, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹⁰ *M.G.*, Docket No. 19-1627 (issued April 17, 2020); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹¹ *Supra* note 8; *B.J.*, Docket No. 19-0960 (issued October 7, 2019).

¹² *See D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

¹³ *Id.*

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.

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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