

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

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 May 8, 1975 appellant, then a 35-year-old mail foreman, filed a traumatic injury claim (Form CA-1) alleging that on that day he sustained a left forearm cut during an altercation with another employee who struck him while sitting at his desk. OWCP accepted the claim for left forearm laceration and atypical paranoid disorder, post-traumatic syndrome disorder (PTSD), and major depressive disorder with melancholia. Appellant stopped work on July 28, 1978. OWCP paid him wage-loss compensation, on the periodic rolls as of June 16, 2002.

On November 1, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated December 31, 2020, OWCP informed appellant that no medical evidence had been submitted with his claim and informed him of the type of evidence required to establish his schedule award claim. It advised him that the only accepted conditions were left forearm laceration, unspecified paranoid state, and PTSD and that there was no provision under FECA for payment of a schedule award for emotional conditions. OWCP afforded appellant 30 days to provide the requested evidence.

In response to OWCP's development letter, appellant submitted a January 28, 2021 report from Dr. Emelita B. Talag, a Board-certified psychiatrist, who diagnosed PTSD and psychotic disorder. Dr. Talag advised that appellant was permanently disabled from work with no expectation of any improvement to the degree to function in a workplace or job.

By decision dated March 10, 2021, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body due to his accepted work injury. It noted that he had previously been informed that there is no provision in FECA to pay a schedule award for an emotional condition.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 10, 2021 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.*

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁶ as the appropriate standard for evaluating schedule losses.⁷ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.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

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or the implementing regulations.¹⁰ The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.¹¹ Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.¹² By authority granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina.¹³ Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ A.M.A., *Guides* (6th ed. 2009).

⁷ *Id.* at § 10.404. *See also* *J.C.*, Docket No. 20-1071 (issued January 4, 2021); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁸ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *see also* Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

⁹ *J.C.*, *supra* note 7; *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹⁰ *D.K.*, Docket No. 21-0303 (issued July 8, 2021); *D.L.*, Docket No. 20-0059 (issued July 8, 2020); *W.C.*, 59 ECAB 374 (2008); *Anna V. Burke*, 57 ECAB 521 (2006).

¹¹ 5 U.S.C. § 8107(c).

¹² *Id.*

¹³ *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(a).

or the body as a whole.¹⁴ Moreover, FECA and its implementing regulations do not specifically authorize payment of a schedule award for loss of cognitive function.¹⁵

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 left forearm laceration and atypical paranoid disorder, PTSD, and major depressive disorder with melancholia due to the May 8, 1975 employment injury. On November 12, 2020 appellant filed a Form CA-7, claiming a schedule award.

OWCP, on December 31, 2020, requested that appellant submit a permanent impairment evaluation from his physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*. It also advised that there was no provision under FECA for schedule awards for emotional condition.

Appellant did not, however, submit an impairment evaluation or other medical evidence establishing permanent impairment due to a scheduled member or function of the body. OWCP received a January 28, 2021 report from Dr. Talag documenting appellant's psychiatric diagnoses. However schedule awards are not payable under FECA for psychiatric conditions.¹⁶ The Board has previously explained that FECA does not authorize payment of schedule award benefits for impairment attributable to mental and/or behavioral disorders.¹⁷ The Board has also previously explained that the brain is not considered an organ as that term is defined under FECA.¹⁸ Neither OWCP nor the Board has the authority to enlarge the terms of FECA or to make an award of benefits under terms other than those specified in the statute.¹⁹ Appellant has not submitted any medical evidence establishing a permanent impairment due to a scheduled member or function of the body and thus has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹⁴ *Id.*

¹⁵ *A.S.*, Docket No. 12-1375 (issued February 12, 2013); *Brent A. Barnes*, 56 ECAB 336, 339 (2005).

¹⁶ *P.L.*, Docket No. 15-1285 (issued February 5, 2016); *Brent A. Barnes, id.*

¹⁷ *A.S.*, *supra* note 15.

¹⁸ *Id.*; *see also* 5 U.S.C. § 8101(19).

¹⁹ *G.S.*, Docket No. 17-1318 (issued October 11, 2017); *S.K.*, Docket No. 08-848 (issued January 26, 2009).

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 March 10, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2022
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