

FACTUAL HISTORY

On March 19, 2018 appellant, then a 28-year-old special agent trainee, filed a traumatic injury claim (Form CA-1) alleging that on February 15, 2018 she sustained a possible left shoulder labral tear when performing bear crawls as part of control tactics during mandatory training at the Federal Law Enforcement Training Center while in the performance of duty. OWCP accepted her claim for strain of unspecified muscle, fascia, and tendon at the left shoulder and upper arm level.

On December 2, 2020 appellant underwent OWCP-authorized left shoulder arthroscopy with labral debridement, subacromial decompression with acromioplasty, and subpectoral biceps tenodesis performed by Dr. Meghan Bishop, a Board-certified orthopedic surgeon.

On July 14, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

OWCP, by development letter dated July 21, 2021, requested that appellant submit an impairment evaluation addressing whether she had obtained maximum medical improvement (MMI) and provide an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ It afforded her 30 days to submit the necessary evidence.

OWCP subsequently received an August 4, 2021 letter from Dr. Brandon Erickson, a Board-certified orthopedic surgeon. Dr. Erickson advised that appellant had 20 percent permanent of the left upper extremity and 10 percent permanent impairment of the right upper extremity under New York state guidelines for disability. He noted that she had undergone bilateral biceps tenodesis on the left side, which he had performed, and on the right side which his medical partner had performed. Dr. Erickson cleared appellant to return to full-duty activity without restrictions following rehabilitation for her conditions.

Following Dr. Erickson's report, OWCP continued to receive physical therapy notes regarding appellant's continued treatment of her bilateral shoulder conditions.

By decision dated August 24, 2021, OWCP denied appellant's schedule award claim, finding that Dr. Erickson failed to indicate whether she had reached MMI and that she had sustained permanent impairment of a scheduled member or function of the body in accordance with the sixth edition of the A.M.A., *Guides*.

LEGAL PRECEDENT

Section 8107 of FECA⁴ and section 10.404 of the implementing federal regulations,⁵ provide for payment for permanent impairment of specified members, functions, and organs of the body. FECA, however, does not specify the manner in which the percentage loss of a member

³ A.M.A., *Guides* (6th ed. 2009).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

shall be determined. For consistent results and to ensure equal justice under the law for 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. The A.M.A., *Guides*, has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ For decisions issued after May 1, 2009, OWCP uses the sixth edition of the A.M.A., *Guides*.⁷

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.⁸ 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 that 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*.⁹ 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.¹⁰ 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.¹¹

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 strain of unspecified muscle, fascia, and tendon at the left shoulder and upper arm level and authorized left shoulder arthroscopy with labral debridement, subacromial decompression with acromioplasty, and subpectoral biceps tenodesis performed on December 2, 2020. On July 14, 2021 appellant filed a claim for a schedule award. OWCP on July 21, 2021 requested that she submit a permanent impairment evaluation from her treating physician addressing the extent of any employment-related permanent impairment using the sixth edition of the A.M.A., *Guides*.

In support of her claim, appellant submitted an August 4, 2021 report by Dr. Erickson who found that, under New York state guidelines for disability, she had 10 percent permanent impairment of the right upper extremity and 20 percent permanent of the left upper extremity due

⁶ See *D.J.*, Docket No. 20-0017 (issued August 31, 2021); *F.S.*, Docket No. 18-0383 (issued August 22, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁷ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id.* at Chapter 2.808.5.a (March 2017).

⁸ See *Y.M.*, Docket No. 21-0995 (issued March 2, 2022); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁹ *Supra* note 7 at Chapter 2.808.5 (March 2017).

¹⁰ *Id.* at Chapter 2.808.6(a) (March 2017).

¹¹ *Id.* at Chapter 2.808.6(c).

to bilateral biceps tenodesis. However, Dr. Erickson did not indicate whether she had reached MMI, instead noting that she would be able to return to full-duty work without restrictions following rehabilitation. Appellant thereafter continued with physical therapy for treatment of her bilateral shoulder conditions. The Board further notes that Dr. Erickson did not provide a detailed description of her permanent impairment or calculate an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.

As noted above, appellant must submit an evaluation from a physician that includes the date MMI was reached, a description of the impairment in sufficient detail so that it can be visualized on review, and computation of the percentage of impairment in accordance with the A.M.A., *Guides*.¹² As she has not submitted evidence to establish permanent impairment of a scheduled member or function of the body causally related to her accepted employment condition, the Board finds that she has not met her burden of proof.¹³

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 permanent 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.

¹² *Supra* note 9.

¹³ *See Y.M., supra* note 8; *M.G.*, Docket No. 19-0823 (issued September 17, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board