

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

C.B., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Austin, TX, Employer)

**Docket No. 22-0903
Issued: September 23, 2022**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 29, 2022 appellant filed a timely appeal from a December 19, 2021 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 over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 19, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a permanent impairment of her upper extremities, warranting a schedule award.

FACTUAL HISTORY

On August 3, 2014 appellant, then a 60-year-old transportation security officer/screener, filed a traumatic injury claim (Form CA-1) alleging that she strained the upper part of her left shoulder lifting a golf bag onto a screening table while in the performance of duty. OWCP accepted the claim for a sprain of the left shoulder and upper arm. It subsequently expanded its acceptance of the claim to include a complete left rotator cuff rupture and other affections of the right shoulder region not otherwise classified, a right partial rotator cuff tear, and a right superior glenoid labrum lesion. Following her injury, appellant returned to limited-duty work. OWCP paid her wage-loss compensation for intermittent periods of disability from November 16, 2015 to October 1, 2016.

In a report dated June 5, 2019, Dr. Gregory G. Dammann, who specializes in family medicine and orthopedic surgery, diagnosed status post right rotator cuff repair revision. He advised that appellant could work without restrictions. Dr. Dammann noted that she had “minimal numbness and tingling throughout her right arm.” For the right shoulder, he measured range of motion for forward flexion of 160 degrees and abduction of 160 degrees. Dr. Dammann found negative Hawkins and Neer tests and full strength. He noted that appellant was “attending formal physical therapy as directed.”

On October 5, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated November 16, 2021, OWCP requested that appellant submit a detailed medical report from her physician addressing her permanent impairment due to her accepted employment injury in accordance 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 requested information. OWCP advised appellant that if her physician was unable to provide such a report, she should notify it in writing and if the evidence showed a work-related permanent impairment of a scheduled member that was insufficient to determine the extent of permanent impairment, it would refer her for a second opinion examination.

Appellant did not respond within the allotted time.

By decision dated December 19, 2021, OWCP denied appellant’s schedule award claim.

³ A.M.A., *Guides*, 6th ed. (2009).

LEGAL PRECEDENT

The schedule award provisions of FECA,⁴ and its implementing federal regulations,⁵ 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 2009.⁶ 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.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 maximum medical improvement (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 a permanent impairment of her upper extremities, warranting a schedule award.

⁴ 5 U.S.C. § 8107(c).

⁵ 20 C.F.R. § 10.404.

⁶ 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 Award and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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

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 6 at Chapter 2.808.5.

¹⁰ *Id.* at Chapter 2.808.6a.

¹¹ *Id.* at Chapter 2.808.6(c).

On October 5, 2021 appellant requested a schedule award. OWCP, in a November 16, 2021 development letter, requested that she submit a permanent impairment evaluation from her physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant did not, however, submit any medical evidence establishing permanent impairment.

In a report dated June 5, 2019, Dr. Dammann diagnosed status post right rotator cuff repair revision. He advised that appellant complained of minimal right arm tingling and numbness. Dr. Dammann measured forward flexion and abduction of the right shoulder and found full strength and negative Hawkins' and Neer tests. He noted that appellant was currently undergoing physical therapy. Dr. Dammann did not, however, address whether appellant had reached MMI or find that she had permanent impairment due to her accepted employment injury.¹²

As noted above, appellant 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.¹³ As she has not submitted any medical evidence supporting permanent impairment of a scheduled member or function of the body due to her accepted conditions, the Board finds that she has not met her burden of proof.¹⁴

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 a permanent impairment of her upper extremities, warranting a schedule award.

¹² See *K.J.*, Docket No. 19-1492 (issued February 26, 2020); *K.F.*, Docket No. 18-1517 (issued October 9, 2019).

¹³ 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).

¹⁴ See *A.M.*, Docket No. 21-1413 (issued March 28, 2022).

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board