

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

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<b>I.H., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 22-1265</b>
	)	<b>Issued: April 5, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>BRUCE W. CARTER VA MEDICAL CENTER,</b>	)	
<b>Miami, FL, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 29, 2022 appellant filed a timely appeal from a July 12, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

On July 13, 2004 appellant, then a 32-year-old air conditioning equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2004 he fractured his left index

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

finger when his left hand was caught inside a fan he had ordered disconnected, but was restarted while in the performance of duty. OWCP accepted the claim for a left index finger open fracture, left index finger open wound with tendon involvement, and left-hand lacerations.

On July 10, 2004 Dr. Ricardo J. Jimenez-Lee, a Board-certified plastic surgeon, performed open reduction internal fixation on an open fracture of left index finger with tendon repair.

In a progress note dated April 4, 2005, Dr. Zubin J. Panthaki, a Board-certified hand surgeon, related that appellant had a left-hand index finger open fracture nine months prior. He noted that the fracture had healed, but appellant had some residual pain, likely related to arthritic changes in the joints of his index finger, which could be chronic. Dr. Panthaki released appellant to work without restrictions, but advised appellant to return for reevaluation if he had continued discomfort with full-duty work.

On November 1, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated May 18, 2022, OWCP requested that appellant submit a detailed medical report from his physician addressing his permanent impairment due to his accepted employment injury in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*.<sup>2</sup> It afforded him 30 days to submit the requested information. OWCP advised appellant that, if his physician was unable to provide such a report, he 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 him for a second opinion examination.

Appellant did not respond within the allotted time.

By decision dated July 12, 2022, OWCP denied appellant's schedule award claim.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>3</sup> and its implementing federal regulations,<sup>4</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

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<sup>2</sup> A.M.A., *Guides*, 6<sup>th</sup> ed. (2009).

<sup>3</sup> 5 U.S.C. § 8107(c).

<sup>4</sup> 20 C.F.R. § 10.404.

specified edition of the A.M.A., *Guides*, published in 2009.<sup>5</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>6</sup>

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.<sup>7</sup> 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*.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a permanent impairment of his left upper extremity, warranting a schedule award.

On November 1, 2019 appellant requested a schedule award. OWCP, in a May 18, 2022 development letter, requested that he submit a permanent impairment evaluation from his 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.

On July 10, 2004 Dr. Jimenez-Lee, performed open reduction internal fixation. In a progress note dated April 4, 2005, Dr. Panthaki related that appellant had a left-hand index finger open fracture nine months prior. He noted that the fracture had healed, but appellant had some residual pain, likely related to arthritic changes in the joints of his index figure, which could be chronic. Dr. Panthaki released appellant to work without restrictions, but advised appellant to return for reevaluation if he had continued discomfort with full-duty work. Dr.'s Jimenez-Lee and

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<sup>5</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 2.808.5a (March 2017); *see also id.* at Chapter 3.700, Exhibit 1 (January 2010).

<sup>6</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>7</sup> *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).

<sup>8</sup> *Supra* note 5 at Chapter 2.808.5.

<sup>9</sup> *Id.* at Chapter 2.808.6a.

<sup>10</sup> *Id.* at Chapter 2.808.6(c).

Panthanki did not, however, address whether appellant had reached MMI, or find that appellant had permanent impairment due to his accepted employment injury.<sup>11</sup>

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.<sup>12</sup> As appellant has not submitted any medical evidence supporting permanent impairment of a scheduled member or function of the body due to his accepted conditions, the Board finds that he has not met his burden of proof.<sup>13</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 progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a permanent impairment of his left upper extremity, warranting a schedule award.

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<sup>11</sup> See *K.J.*, Docket No. 19-1492 (issued February 26, 2020); *K.F.*, Docket No. 18-1517 (issued October 9, 2019).

<sup>12</sup> 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).

<sup>13</sup> See *A.M.*, Docket No. 21-1413 (issued March 28, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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