

² The Board notes that, following the November 4, 2021 merit 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.*

(2) whether OWCP properly determined that appellant abandoned his request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On March 30, 2020 appellant, then 51-year-old deputy marshal, filed a traumatic injury claim (Form CA-1) alleging that on March 26, 2020 he injured his left knee while in the performance of duty. He noted that he was running on a treadmill in the gym when he developed left knee pain. Appellant did not stop work. OWCP accepted the claim for left knee medial meniscus tear, left knee pain, and left knee unilateral primary osteoarthritis. Appellant underwent authorized left knee arthroscopic surgery, which was performed on September 17, 2020.

On November 23, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated January 4, 2021, OWCP requested that appellant submit a report from a physician addressing whether he had reached maximum medical improvement (MMI) and rating any employment-related permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ It indicated that, to date, no medical evidence had been received in support of his claim for a schedule award. OWCP advised that, if appellant's physician was unable or unwilling to provide the required report, to notify OWCP in writing and if his case met the essential elements for a schedule award claim, he would be scheduled to be seen by a second opinion specialist. It afforded him 30 days to submit additional medical evidence in support of his schedule award claim. OWCP noted that, if the requested medical evidence was not received within 30 days from the date of the letter, a decision would be made based on the evidence in the file. No further evidence regarding a schedule award was received.

OWCP received a series of physical therapy sessions reports commencing on January 12, 2021.

By decision dated May 14, 2021, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish that he had reached MMI and that he had sustained permanent impairment of a scheduled member or function of the body, in accordance with the A.M.A., *Guides*, warranting a schedule award.

On June 15, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 8, 2021 letter, an OWCP hearing representative notified appellant that a telephonic hearing was scheduled for October 20, 2021 at 12:00 p.m. "Eastern Time." The hearing representative provided appellant a toll-free telephone number and passcode to access the hearing. OWCP's hearing representative mailed the notice of hearing to his last known address. Appellant did not appear for the hearing by telephone at the appointed time.

³ A.M.A., *Guides* (6th ed. 2009).

By decision dated November 4, 2021, OWCP determined that appellant abandoned his request for a telephonic hearing. It noted that an oral hearing was scheduled to be conducted by telephone on October 20, 2021 and that he received written notification of the hearing 30 days in advance of the hearing. OWCP found that appellant failed to appear for the hearing, and that there was no indication in the file that he contacted OWCP either prior to, or subsequent to, the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision 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

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF): A Contemporary Model of Disablement*.⁸ Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹¹

⁴ *Supra* note 1.

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 Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Chapter 3.700, Exhibit 1 (January 2010).

⁷ *B.W.*, Docket No. 21-0174 (issued June 7, 2021); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁸ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

⁹ *Id.* at 494-531.

¹⁰ *Id.* at 521.

¹¹ *B.W.*, *supra* note 7; *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

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.¹² 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*.¹³ 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.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 1

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 the claim for left knee medial meniscus tear, left knee pain, and left knee unilateral primary osteoarthritis due to the March 26, 2020 employment injury. On November 23, 2020 appellant filed a claim for a schedule award.

OWCP, on January 4, 2021 requested that appellant submit a permanent impairment evaluation from his physician addressing the date of MMI and extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant did not, however, submit any medical evidence establishing permanent impairment.

As noted above, appellant must submit an evaluation from a physician that supports a finding that appellant has reached MMI, and which 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.¹⁶ As he has not submitted any medical evidence supporting permanent impairment of a scheduled member or function of the body due to his accepted employment conditions, the Board finds that he has not met his burden of proof.

¹² *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *N.S.*, Docket No. 21-0508 (issued September 22, 2021); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹³ *Supra* note 6 at Chapter 2.808.5 (March 2017).

¹⁴ *Id.* at Chapter 2.808.6a. (March 2017).

¹⁵ *Id.* at Chapter 2.808.6c. (March 2017).

¹⁶ See *J.P.* *supra* note 12; *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).

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.

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹⁷ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹⁸ OWCP has the burden of proving that it was properly mailed to the claimant and any representative of record.¹⁹

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled, and conducted by teleconference.²⁰ The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.²¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's May 14, 2021 decision denying appellant's request for a schedule award, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a September 8, 2021 letter, OWCP's hearing representative notified him of a scheduled a telephonic hearing for October 20, 2021 at 12:00 p.m. EST. OWCP's hearing representative properly mailed the notice to appellant's last known address. The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule.²² Appellant failed to call-in for the scheduled hearing using the provided telephone number. He did not request a

¹⁷ 20 C.F.R. § 10.616(a).

¹⁸ *Id.* at 10.617(b).

¹⁹ *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *A.R.*, Docket No. 19-1691 (issued February 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

²⁰ *Supra* note 13 at § 10.622(f).

²¹ *Id.*; *supra* note 6 at Chapter 2.1601.6 (October 2011); *see also L.T.*, *supra* note 19; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

²² *See L.T.*, *id.*; *V.C.*, *supra* note 19; *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant did not request a postponement, did not called in to the scheduled hearing, or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining his failure to appear, the Board finds that he abandoned his request for a telephonic hearing.²³

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. The Board further finds that OWCP properly determined that he abandoned his request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

ORDER

IT IS HEREBY ORDERED THAT November 4 and May 14, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 15, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

²³ See *supra* note 21; see also *R.S.*, Docket No. 15-1358 (issued December 4, 2015).