

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

_____)	
D.M., Appellant)	
)	
and)	Docket No. 21-0792
)	Issued: January 4, 2023
U.S. POSTAL SERVICE, TUCSON)	
SILVERBELL POST OFFICE, Tucson, AZ,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 11, 2021 appellant filed a timely appeal from a March 26, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

FACTUAL HISTORY

On November 27, 2017 appellant, then a 57-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a prolapsed bladder due to factors of her

¹ 5 U.S.C. § 8101 *et seq.*

federal employment, including repetitive heavy lifting and other work activities. She noted that she first became aware of her condition and realized its relation to her federal employment on November 1, 2017. Appellant did not stop work. On June 19, 2019 OWCP accepted her claim for aggravation of cystocele, midline, and strain of muscle, fascia, and tendon of the lower back.

On June 26, 2019 appellant accepted a modified assignment, working in an access control booth and performing other duties within her medical restrictions.

In a July 11, 2019 duty status report (Form CA-17), Dr. Clifford Janke, Board-certified in emergency medicine, diagnosed cystocele midline aggravation and lumbar strain and indicated that appellant would be able to resume work on July 16, 2019 with restrictions.

On July 23, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated July 29, 2019, OWCP acknowledged receipt of appellant's Form CA-7 and requested that she submit a report from her treating physician addressing whether she 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*).²

Appellant submitted a July 11, 2019 narrative report in which Dr. Janke reviewed her employment duties and history of back pain related to her accepted employment injury. On evaluation Dr. Janke diagnosed strain of the muscle, fascia, and tendon of the lower back as well as segmental and somatic dysfunction of the lumbar region. He advised that appellant could return to work with restrictions and recommended that she undergo further therapy and treatment.

On August 5, 2019 appellant filed another Form CA-7 claim for a schedule award.

In a development letter dated August 19, 2019, OWCP requested that Dr. Mitzi Barmatz, a Board-certified urologist and appellant's treating physician, provide a medical report, which included an impairment rating based on the A.M.A., *Guides*. It afforded Dr. Barmatz 30 days to submit the requested information. No response was received.

On January 8, 2020 OWCP referred a statement of accepted facts (SOAF) and the medical evidence of record to Dr. David Krohn, a Board-certified internist serving as an OWCP district medical adviser (DMA), for an impairment rating. In his July 7, 2020 report, Dr. Krohn reviewed the SOAF and medical evidence of record. He observed appellant's accepted condition of cystocele and, using page 139, Table 7-4 of the sixth edition of the A.M.A., *Guides*, found a class one default grade C impairment correlating with five percent whole person impairment. Dr. Krohn noted that there were no urodynamic testing results within the case record and, therefore, moved the grade one position to the left, finding three percent whole person impairment. He explained that impairment for loss of bodily organs under FECA could not be assigned in terms of whole person impairment. Using the formula for converting a whole person impairment to an impairment for a certain organ, Dr. Krohn found 10 percent impairment for bladder disease. He further

² A.M.A., *Guides* (6th ed. 2009).

explained that there was no evidence for lumbar radiculopathy resulting from a subluxation of the lumbar vertebrae and that the findings of subluxation in an imaging study alone was insufficient to qualify for an impairment. Dr. Krohn also noted that an abnormality of the lumbar spine could only result in a schedule award if it involved an impairment of the extremities. In an August 3, 2020 addendum, he clarified that the date of MMI was February 8, 2018.

By decision dated August 27, 2020, OWCP denied appellant's schedule award claim, finding that there was no statutory basis for payment of a schedule award for impairment to the bladder, colon, or rectum under FECA or in the regulations. It further found that the medical evidence of record was insufficient to support permanent impairment of her lumbar spine.

On September 1, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated March 26, 2021, OWCP's hearing representative affirmed the August 27, 2020 decision.

LEGAL PRECEDENT

A schedule award can only be paid for a condition causally related to an employment injury. 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.³

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

³ B.S., Docket No. 19-1717 (issued August 11, 2020); D.F., Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a); S.C., Docket No. 19-1177 (issued August 27, 2020); *see also Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or the implementing regulations.⁸ The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.⁹ Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.¹⁰ 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, vulva/vagina, and skin.¹¹ There is no statutory basis for payment of a schedule award for impairment to the bladder, colon, or rectum under FECA or in the regulations.¹²

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.

Dr. Krohn, in his July 7, 2020 medical report, observed appellant's accepted aggravation of cystocele and, using the sixth edition of the A.M.A., *Guides*, determined that she had 10 percent impairment for bladder disease. As previously noted, neither FECA nor OWCP's implementing regulations provide for a schedule award for the bladder.¹³ A schedule award is not payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.¹⁴ FECA does not allow OWCP to add organs or functions to the compensation schedule on a case-by-case basis and the Board lacks authority to enlarge the provisions of the statute or regulations.¹⁵ The Board finds, therefore, that appellant is not entitled to a schedule award for permanent impairment to the bladder.¹⁶

Dr. Krohn also indicated that the medical evidence of record was insufficient to qualify for an impairment rating in relation to appellant's lumbar condition, explaining that an abnormality of the lumbar spine could only result in a schedule award if it involved an impairment of the extremities. Neither FECA nor its implementing regulations provide for the payment of a schedule

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

⁹ 5 U.S.C. § 8107(c).

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.404(b).

¹² *Supra* note 4; *P.S.*, Docket No. 15-0682 (issued July 14, 2015); *D.J.*, Docket No. 11-1359 (issued February 24, 2012).

¹³ *Id.*

¹⁴ *Supra* note 8.

¹⁵ *Janet C. Anderson*, 54 ECAB 394 (2003).

¹⁶ *See D.K.*, Docket No. 12-1190 (issued June 17, 2013).

award for the permanent loss of use of the back/spine or the body as a whole.¹⁷ The back is specifically excluded from the definition of organ under FECA.¹⁸ Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) offers an approach to rating spinal nerve impairments consistent with sixth edition methodology.¹⁹ The Board finds that the DMA Dr. Krohn correctly applied the appropriate tables and grading schedules of the A.M.A., *Guides* and *The Guides Newsletter* to find that appellant had zero percent permanent impairment due to her accepted lumbar sprain.

As the medical evidence of record does not establish permanent impairment of a scheduled member or function of the body, the Board finds that appellant has not met her burden of proof to establish her schedule award claim.

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.

¹⁷ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

¹⁸ *See* 5 U.S.C. § 8101(19); *see also G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹⁹ *Supra* note 7 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4. *See also C.T.*, Docket No. 22-0822 (issued November 29, 2022).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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