

**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. 22-0926
Issued: January 6, 2023**

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 May 23, 2022 appellant filed a timely appeal from a December 20, 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 May 12, 2011 appellant, then a 57-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on April 26, 2011 she twisted her right knee

¹ 5 U.S.C. § 8101 *et seq.*

when conducting a standard pat-down while in the performance of duty. She stopped work on May 12, 2011.

On May 16, 2011 Dr. Dean Chen, a Board-certified orthopedist, treated appellant for a right knee injury sustained at work on April 28, 2011. He noted x-rays of the right knee revealed no fracture, dislocation, or arthritis. Dr. Chen diagnosed pain of the right knee joint and possible medial meniscus tear of the right knee. He subsequently treated appellant on June 16, 2011 for worsening right knee symptoms including popping, catching, locking episodes, instability, and pain along the medial joint line and posterolateral aspect of the knee. Dr. Chen diagnosed pain of the right knee joint and possible medial meniscus tear of the right knee.

In a form report dated June 28, 2011, Dr. Chen diagnosed right medial meniscus tear and returned appellant to work without restrictions on June 28, 2011. On June 28, 2011 he reviewed a magnetic resonance imaging (MRI) scan study of the right knee and diagnosed medial meniscus tear of the right knee, degenerative joint disease, and right knee joint pain. Dr. Chen advised that appellant's condition was not improving and recommended continued conservative treatment including physical therapy. On July 13, 2011 he evaluated her, diagnosed medial meniscus tear of the right knee, degenerative joint disease of the right knee and right knee pain. On July 27, 2011 Dr. Chen evaluated appellant for increased right knee pain and administered an intra-articular injection.

An MRI scan of the right knee dated June 17, 2011 demonstrated tricompartmental degenerative arthritis, tiny marginal and intercondylar notch osteophytes, incomplete radial tear suspected at the inner third of the posterior horn of the medial meniscus, and a benign enchondroma.

By decision dated July 7, 2011, OWCP accepted appellant's claim for a sprain of the right knee, lateral collateral ligament and subsequently expanded acceptance of her claim to include tear of the medial meniscus of the right knee.

Dr. Chen continued conservative treatment for appellant's right knee through September 15, 2011 without sufficient improvement and recommended arthroscopic surgery. In a form report dated September 15, 2011, he diagnosed medial meniscus tear and degenerative joint disease, primary, localized to the right knee, and returned her to work with restrictions. On October 26, 2011 Dr. Chen performed an OWCP-authorized right knee arthroscopy with limited synovectomy, partial medial meniscectomy, chondroplasty of the medial femoral condyle with microfracture, and chondroplasty of the patellofemoral joint. He diagnosed right knee medial meniscus tear with chondral injury and medial femoral condyle. On November 9, 2011 Dr. Chen treated appellant status post right knee arthroscopy and noted that she was progressing well postoperatively. He diagnosed degenerative joint disease localized right knee, pain of the right knee joint, and status post right knee arthroscopy with partial medial meniscectomy on October 26, 2011. Dr. Chen advised that appellant was totally disabled until November 17, 2011 and then released her to light-duty work. In a form report of even date, he diagnosed status post medial meniscectomy on October 26, 2011 and returned her to work on November 17, 2011 with restrictions through January 17, 2012.

On September 29, 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 an impairment evaluation addressing whether she had reached maximum medical improvement (MMI) and provide an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² It indicated that, to date, no medical evidence had been received in support of her 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 her case met the essential elements for a schedule award claim (work-related permanent condition and a schedule member) and the medical evidence was not sufficient to determine permanent impairment, she would be scheduled to be seen by a second opinion specialist. It afforded her 30 days to submit additional medical evidence in support of her 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 may be made based on the evidence in the file. No evidence was received.

By decision dated December 20, 2021, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA,³ and its implementing federal regulations,⁴ 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

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.⁷ 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

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ 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).

⁷ *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁸ 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.⁹ 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.¹⁰

The claimant has the burden of proof to establish that the condition for which a schedule award is sought is causally related to his or her employment.¹¹ OWCP procedures, however, further provide that, if a claimant does not provide an impairment evaluation from his or her physician when requested, and there is an indication of permanent impairment in the medical evidence of file, the claims examiner (CE) should refer the claimant for a second opinion evaluation. The CE may also refer the case to the DMA prior to scheduling a second opinion examination to determine if the evidence in the file is sufficient for the DMA to provide an impairment rating. If the case is referred for a second opinion, the report should contain the information described in 6a above.¹² If it does not contain this information, clarification with the second opinion should be sought.¹³

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 the claim for sprain of the right knee, lateral collateral ligament, and tear of the medial meniscus of the right knee. On September 29, 2021 appellant filed a claim for a schedule award based on her accepted conditions. She did not submit any medical evidence in support of a schedule award. By decision dated December 20, 2021, OWCP denied appellant's schedule award claim, finding that she had not provided any medical evidence establishing permanent impairment of a scheduled member or function of the body.

Under FECA,¹⁴ where a claimant is seeking a schedule award, he or she must submit a medical report that "must contain accurate measurements of the function of the organ or member,

⁸ *Supra* note 6 at Chapter 2.808.5 (March 2017).

⁹ *Id.* at Chapter 2.808.6a (March 2017).

¹⁰ *Id.* at Chapter 2.808.6c.

¹¹ *Id.*

¹² *Supra* note 9 at Chapter 2.808.6a(1) provides that the medical evidence should include a detailed history of clinical presentation, physical findings, functional history, clinical studies or objective tests, analysis of findings, and the appropriate impairment based on the most significant diagnosis, as well as a discussion of how the impairment rating was calculated. *Id.* at Chapter 2.808.6a.

¹³ *Supra* note 6 at Chapter 2.808.6d (March 2017).

¹⁴ *Supra* note 1.

in accordance with the A.M.A., *Guides*.”¹⁵ The burden is on the claimant to provide this evidence.¹⁶ The regulations further provide that, if the claimant’s evidence is insufficient to meet the burden of proof, OWCP should inform the claimant of the additional evidence needed and provide the claimant with at least 30 days to submit it.¹⁷ OWCP issued a development letter on November 16, 2021. There was no response to this letter.

Although OWCP requested a medical opinion establishing the extent of appellant’s permanent impairment, there is no current medical evidence of record supporting that she has ratable permanent impairment of a scheduled member or function of the body. The Board finds, therefore, that she has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.¹⁸

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.

¹⁵ 20 C.F.R. § 10.333.

¹⁶ *Id.* at § 10.115.

¹⁷ *Id.* at § 10.121.

¹⁸ *See E.D.*, Docket No. 19-1562 (issued March 3, 2020); *I.R.*, Docket No. 16-1796 (issued January 13, 2017); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2023
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