

FACTUAL HISTORY

On July 2, 2019 appellant, then a 52-year-old federal agent, filed a traumatic injury claim (Form CA-1) alleging that on May 7, 2019 he sustained tick bites during training while in the performance of duty. He stopped work on May 21, 2019. OWCP accepted the claim for allergy/Alpha-gal syndrome. It paid appellant wage-loss compensation on the supplemental rolls for the period July 7 through August 17, 2019, on the periodic rolls for the period August 18, 2019 through March 27, 2021, and on the supplemental rolls for the period March 28 through 30, 2021. Appellant returned to full-time work for a new employer, effective March 31, 2021.

In a report of functional capacity evaluation (FCE) dated January 22, 2020, Rob Pearse, an exercise physiologist and certified functional evaluator, indicated that appellant gave consistent effort during testing and was capable of performing medium-duty work. He noted a diagnosis of Alpha-gal syndrome.

In a report dated April 28, 2021, Dr. Cornelius Mance, Board-certified in internal medicine, psychiatry, and neurology, noted that appellant related complaints of dizziness. In an attending physician's report (Form CA-20) of even date, he diagnosed Alpha-gal syndrome, vertigo, fatigue, and tremor due to a 2019 work exposure. Dr. Mance further noted prior exposures in 2013 and 2016 and opined that appellant required light-work restrictions and long-term medication usage to manage weakness and fatigue.

On January 3, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated January 20, 2022, OWCP notified appellant of the deficiencies of his claim. It requested that he submit an impairment evaluation addressing whether he had obtained maximum medical improvement (MMI) and providing an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

OWCP thereafter received a narrative report dated February 18, 2022 by Dr. Mance, who indicated that he initially evaluated appellant on September 23, 2019 for vertigo, fatigue, weakness, swelling of his pancreas, depression, hand tremors, confusion, concentration problems, nausea, vomiting, personality changes, double vision, and ringing in his ears. Dr. Mance diagnosed Alpha-gal syndrome due to tick bites and opined that this condition was the cause of his symptoms.

By decision dated April 28, 2022, OWCP denied appellant's schedule award claim finding that the medical evidence of record did not support a permanent impairment of a member or function of the body.

² A.M.A., *Guides* (6th ed. 2009).

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. 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 2009.⁵ 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.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 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

No schedule award is payable for a member, function, or organ of the body not specified in FECA or in the implementing regulations.¹¹ FECA identifies members such as the arm, leg, hand, foot, thumb, and finger, organs to include the eye and functions as loss of hearing and loss

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

⁵ 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* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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

⁷ *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).

⁸ *Supra* note 5 at Chapter 2.808.5.

⁹ *Id.* at Chapter 2.808.6a.

¹⁰ *Id.* at Chapter 2.808.6c.

¹¹ *See G.S.*, Docket No. 17-1318 (issued October 11, 2017); *Leroy M. Terska*, 53 ECAB 247 (2001).

of vision.¹² Section 8107(c)(22) of FECA provides for the payment of compensation for permanent loss of any other important external or internal organ of the body as determined by the Secretary of Labor.¹³ The Secretary of Labor has made such a determination and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus, and tongue to the schedule.¹⁴

ANALYSIS

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 appellant's claim for allergy/Alpha-gal syndrome. On January 3, 2022 he filed a claim for a schedule award. On January 20, 2022, it requested that he submit a permanent impairment evaluation from his treating physician addressing the extent of any employment-related permanent impairment using the sixth edition of the A.M.A., *Guides*.

In support of his claim, appellant submitted a January 22, 2020 FCE by Mr. Pearse and reports by Dr. Mance, which noted a diagnosis of Alpha-gal syndrome. However, these reports did not indicate whether he had reached MMI and did not calculate an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. As noted above, appellant must submit an evaluation from a physician that includes the date MMI was reached, a description of the impairment in sufficient detail so that it can be visualized on review, and computation of the percentage of impairment in accordance with the A.M.A., *Guides*.¹⁵ As he has not submitted evidence to establish permanent impairment of a scheduled member or function of the body causally related to his accepted employment condition, the Board finds that he has not met his burden of proof.¹⁶

Appellant may request a 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 permanent impairment of a scheduled member or function of the body, warranting a schedule award.

¹² 5 U.S.C. § 8107(c).

¹³ *Id.* at § 8122(c)(22).

¹⁴ 20 C.F.R. § 10.404; *Henry B. Floyd, III*, 52 ECAB 220 (2001).

¹⁵ *Supra* note 8.

¹⁶ *See R.A.*, Docket No. 22-0282 (issued March 14, 2022); *J.G.*, Docket No. 21-1192; *M.G.*, Docket No. 19-0823 (issued September 17, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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