

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

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**R.S., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
WEST LOS ANGELES VA MEDICAL CENTER,  
Los Angeles, CA, Employer**

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**Docket No. 23-1063  
Issued: February 9, 2024**

*Appearances:*  
*Azu Osemene, Esq., for the appellant<sup>1</sup>*  
*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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 7, 2023 appellant, through counsel, filed a timely appeal from a May 18, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> Counsel did not appeal from OWCP's July 6, 2023 merit decision, which denied appellant's schedule award claim. Thus, the July 6, 2023 decision is not properly before the Board and will not be addressed in this decision. *See* 20 C.F.R. § 501.3.

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

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

## FACTUAL HISTORY

This case has previously been before the Board on different issues.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 20, 2017 appellant, then a 49-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that he sustained a mental illness as a result of undue stress causally related to factors of his federal employment. He attributed his condition to harassment by management. Appellant noted that he first became aware of his condition and its relation to factors of his federal employment on April 1, 2011. He was last exposed to the conditions identified as causing his condition on July 11, 2017 the date he stopped work. OWCP accepted the claim for major depressive disorder, single episode and anxiety disorder, unspecified.

On February 28, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated July 5, 2022, OWCP informed appellant of the type of evidence required to establish his schedule award claim. It advised that there was no provision under FECA for payment of a schedule award for emotional conditions. OWCP requested that appellant submit a detailed narrative report from his attending physician indicating whether he had reached maximum medical improvement (MMI), the diagnosis on which impairment is based, a detailed description of all pertinent clinical findings, a comprehensive description of any permanent impairment, and an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>5</sup>

In response to OWCP's development letter, appellant submitted a July 31, 2022 impairment rating by Dr. Dwight A. Owens, a Board-certified psychiatrist, with a biographical and psychosocial assessment by Felicia English, DSW, a licensed clinical social worker. Dr. Owens recounted a history of injury and treatment, reviewed medical records, and administered a mental status examination. He diagnosed recurrent major depressive disorder, unspecified, and anxiety disorder, unspecified. Dr. Owens opined that appellant had reached MMI. Referring portions of Chapter 14 (Mental and Behavioral Disorders) of the sixth edition of the A.M.A., *Guides*, he found 20 percent permanent impairment due to mental and behavioral disorders.

By decision dated November 16, 2022, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body due to his accepted employment injury. It noted that

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<sup>4</sup> Docket No. 20-1307 (issued June 29, 2021).

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

he had previously been informed that there is no provision in FECA to pay a schedule award for an emotional condition.

On December 5, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.<sup>6</sup>

By decision dated May 18, 2023, OWCP's hearing representative denied modification of the November 16, 2022 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>7</sup> and its implementing regulations<sup>8</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. 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides*<sup>9</sup> as the appropriate standard for evaluating schedule losses.<sup>10</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.<sup>11</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>12</sup>

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or the implementing regulations.<sup>13</sup> The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.<sup>14</sup> Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.<sup>15</sup> By authority granted under FECA, the

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<sup>6</sup> In a January 11, 2023 letter, counsel asserted that appellant's psychiatric conditions and medication prescribed to treat those conditions had impaired scheduled members of the body.

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> *Supra* note 5.

<sup>10</sup> 20 C.F.R. § 10.404. *See also J.C.*, Docket No. 20-1071 (issued January 4, 2021); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>11</sup> *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *see also id.* at Chapter 2.808.5a (March 2017).

<sup>12</sup> *J.C.*, *supra* note 10; *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>13</sup> *D.K.*, Docket No. 21-0303 (issued July 8, 2021); *D.L.*, Docket No. 20-0059 (issued July 8, 2020); *W.C.*, 59 ECAB 374 (2008); *Anna V. Burke*, 57 ECAB 521 (2006).

<sup>14</sup> 5 U.S.C. § 8107(c).

<sup>15</sup> *Id.*

Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina.<sup>16</sup> Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.<sup>17</sup> Moreover, FECA and its implementing regulations do not specifically authorize payment of a schedule award for loss of cognitive function.<sup>18</sup>

### 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 that appellant sustained major depressive disorder, single episode, and anxiety disorder, unspecified, due to the accepted employment factors. On February 28, 2022 appellant filed a Form CA-7, for a schedule award.

OWCP on July 5, 2022 requested that appellant submit a permanent impairment evaluation from his physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*. It also advised that there was no provision under FECA for schedule awards for emotional conditions.

Appellant did not, however, submit an impairment evaluation or other medical evidence establishing permanent impairment due to a scheduled member or function of the body. OWCP received an August 15, 2022 report from Dr. Owens documenting appellant's psychiatric diagnoses. However, schedule awards are not payable under FECA for psychiatric conditions.<sup>19</sup> The Board has previously explained that FECA does not authorize payment of schedule award benefits for impairment attributable to mental and/or behavioral disorders.<sup>20</sup> The Board has also previously explained that the brain is not considered an organ as that term is defined under FECA.<sup>21</sup> Neither OWCP nor the Board has the authority to enlarge the terms of FECA or to make an award of benefits under terms other than those specified in the statute.<sup>22</sup>

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<sup>16</sup> *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(a).

<sup>17</sup> *Id.*

<sup>18</sup> A.S., Docket No. 12-1375 (issued February 12, 2013); *Brent A. Barnes*, 56 ECAB 336, 339 (2005).

<sup>19</sup> *E.B.*, Docket No. 21-0786 (issued February 16, 2022); *P.L.*, Docket No. 15-1285 (issued February 5, 2016); *Brent A. Barnes*, *id.*

<sup>20</sup> *E.B.*, *id.*; A.S., *supra* note 18.

<sup>21</sup> *Id.*; *see also* 5 U.S.C. § 8101(19).

<sup>22</sup> *G.S.*, Docket No. 17-1318 (issued October 11, 2017); *S.K.*, Docket No. 08-848 (issued January 26, 2009).

As the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award, the Board finds that appellant has not met his burden of proof.<sup>23</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 18, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>23</sup> *E.B.*, *supra* note 19.