



date. By decision dated May 1, 2018, the Board affirmed this termination.<sup>2</sup> Appellant continued to claim ongoing disability and medical residuals. By decision dated August 16, 2022, the Board found that appellant had not met his burden of proof to establish continuing disability or residuals on or after December 1, 2016 causally related to his accepted February 25, 1993 employment injury.<sup>3</sup>

On July 4, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support of this claim, appellant provided documentation from the Veterans Administration listing his service-connected disability compensation and disabilities as bilateral carpal tunnel syndrome, major depression, hypertension, and low back pain.

In a July 10, 2023 development letter, OWCP requested that appellant submit an impairment calculation addressing whether he had reached maximum medical improvement (MMI) and to provide an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>4</sup> 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 it 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 the necessary medical evidence.

By decision dated August 10, 2023, OWCP denied appellant's schedule award claim.

The Board, having duly considered the matter, finds that this case is not in posture for decision.

Section 10.121 of OWCP's regulations previously provided that if a claimant submits factual evidence, medical evidence, or both in support of his or her claim, but OWCP determines that this evidence is not sufficient to meet the burden of proof, it will inform the claimant of the additional evidence needed and provide the claimant at least 30 days to submit the evidence required.<sup>5</sup> Effective March 7, 2023, OWCP amended the minimum amount of time allowed to claimants to submit the evidence required in accordance with 20 C.F.R. § 10.121 from 30 days to 60 days.<sup>6</sup> It is well established that proceedings under the Federal Employees' Compensation Act<sup>7</sup> (FECA) are not adversarial in nature. OWCP shares responsibility in the development of

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> A.M.A., *Guides* 6<sup>th</sup> ed (2009).

<sup>5</sup> 20 C.F.R. § 10.121.

<sup>6</sup> *Id.* Effective March 7, 2023, 20 C.F.R. § 10.121 was amended to allow a claimant 60 days, increased from the prior 30-day period, to submit supporting evidence on an initial claim. *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.0800.4c(2) (November 2023).

<sup>7</sup> 5 U.S.C. § 8101 *et seq.*

the evidence and has an obligation to see that justice is done.<sup>8</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.<sup>9</sup>

Since OWCP, in its July 10, 2023 development letter, did not afford appellant 60 days within which to submit the requested evidence, the Board finds that it did not fulfill its responsibility under section 10.121 of its regulations.<sup>10</sup>

Thus, the Board finds that this case must be remanded for proper application of section 10.121 of OWCP's regulations, allowing appellant 60 days to respond to the request for additional evidence, to be followed by a *de novo* decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the August 10, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: February 8, 2024  
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

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<sup>8</sup> *D.L.*, Docket No. 20-1299 (issued May 5, 2022); *J.H.*, Docket No. 19-1476 (issued March 23, 20201); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

<sup>9</sup> *Supra* note 5 and 6; *D.L.*, *id.*

<sup>10</sup> *Supra* note 5 and 6.