

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **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**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 8, 2016 appellant, then a 46-year-old multi-family housing specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 22, 2015 she was drugged, followed to her room, and sexually assaulted while attending an employment-related conference at a hotel. She reported that the assault resulted in bruising, bleeding, and post-traumatic stress disorder (PTSD). Appellant did not stop work. The employing establishment acknowledged that she was in the performance of duty. It also acknowledged that its knowledge of the facts of the incident agreed with statements of appellant and/or witnesses. By decision dated August 25, 2020, OWCP accepted appellant's claim for rectal tear, gonococcal infection, and contusion of the right upper arm, left upper arm, chest wall, right thigh and left thigh.

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

By decision dated December 14, 2020, OWCP expanded the acceptance of appellant's claim to include depression and PTSD.

OWCP received additional evidence. In support of her claim, appellant submitted an October 9, 2020 statement, wherein Kristine Kaufman, a certified nurse practitioner, noted that appellant reached maximum medical improvement (MMI) on September 16, 2018.

On August 20, 2021 Dr. Sami E. Moufawad, a Board-certified psychiatrist, reviewed appellant's employment duties and history related to her accepted employment injury. He diagnosed rectal tear, gonococcal infection, and contusion of the right upper arm, left upper arm, chest wall, right thigh, and left thigh. Dr. Moufawad opined that the diagnoses were the result of the accepted September 22, 2015 employment injury. He noted that appellant reached MMI on August 20, 2021. Dr. Moufawad noted that the gonococcal infection was treated, and she was currently having symptoms from the rectal tear where she developed a fissure requiring surgery and continues to have anal incontinence. He calculated appellant's impairment based on the diagnosis-based impairment (DBI) method in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>4</sup> Regarding appellant's diagnoses of rectal tear, Dr. Moufawad utilized Table 16-6, page 116, and determined that she had a Class 3 impairment due to frequent moderate and occasional severe

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<sup>3</sup> Docket No. 18-1411 (issued July 22, 2020).

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

symptoms of anal incontinence despite medications and dietary modification. He did not perform a physical examination of the rectal area and objective testing revealed low anal tone. Dr. Moufawad calculated that appellant had 16 percent whole person impairment.

In a development letter dated November 9, 2021, 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 MMI and supporting any employment-related permanent impairment to a scheduled member or function of the body in accordance with the sixth edition of the A.M.A., *Guides*.<sup>5</sup>

On June 16, 2023 appellant filed another Form CA-7 schedule award claim.

In a development letter dated August 3, 2023, 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 MMI and supporting any employment-related permanent impairment to a scheduled member or function of the body in accordance with the sixth edition of the A.M.A., *Guides*.<sup>6</sup>

By decision dated December 7, 2023, 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. It concluded, therefore, that the requirements had not been met for entitlement to a schedule award.

On December 14, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated January 9, 2024, an OWCP hearing representative set aside the December 7, 2023 decision and remanded the case for further development. The hearing representative instructed OWCP to further develop the medical aspects of the claim and refer the case record to a district medical adviser (DMA) to verify that the method of calculation was correct and in accordance with the A.M.A., *Guides* before a final determination on impairment can be issued. The hearing representative further instructed OWCP to issue a *de novo* decision on appellant's schedule award claim.

On March 7, 2024 OWCP referred the medical evidence of record, along with a statement of accepted facts (SOAF), to Dr. David I. Krohn, a Board-certified internist serving as an OWCP DMA, for an impairment rating. In his March 17, 2024 report, Dr. Krohn reviewed the SOAF and medical evidence of record. He noted appellant's accepted condition of anal tear and, utilized Table 16-6 of the sixth edition of the A.M.A., *Guides*, to find a Class 3 impairment with a default value of 16 correlating with 16 percent whole person impairment. Dr. Krohn noted frequent moderate, and occasionally severe, symptoms of anal disease despite daily medication and other treatment. He noted that there were no physical findings as rectal/anal examination was not performed, and no objective testing such as anal manometry or anoscopy was performed.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Dr. Krohn explained that impairment for loss of bodily organs under FECA could, therefore, 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, he found 53 percent permanent impairment for anal disease. Dr. Krohn found appellant reached MMI on August 20, 2021.

On April 17, 2024 OWCP requested that the DMA clarify whether the 53 percent impairment due to anal disease was considered an impairment to one of the scheduled organs. If the anal disease was considered part of a covered organ under FECA, OWCP requested that the DMA explain how the 16 percent whole person impairment for the injury or condition was calculated.

In a supplemental report dated May 19, 2024, Dr. Krohn reviewed FECA 5 U.S.C. § 8107(c)(22), as well as the listing of covered organs under FECA. He opined that assignment of impairment for the anus is not included among the organs by which the percentage of impairment of a particular organ is assigned, not in terms of the whole person, but rather such impairments are converted to a percent impairment of the involved organ. Regarding appellant's diagnosis of rectal tear, Dr. Krohn utilized Table 16-6, page 116, and determined that she had a Class 3 impairment, with a default value of 16 corresponding to 16 percent whole person impairment due to frequent moderate and occasionally severe symptoms of anal disease despite daily medication and other treatment.

By *de novo* decision dated June 11, 2024, 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, warranting a schedule award.

On June 18, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 2, 2024.

By decision dated November 22, 2024, OWCP's hearing representative affirmed the June 11, 2024 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.<sup>7</sup>

The schedule award provisions of FECA,<sup>8</sup> and its implementing federal regulations,<sup>9</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. FECA,

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<sup>7</sup> 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).

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404.

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.<sup>10</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>11</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>12</sup> The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.<sup>13</sup> Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.<sup>17</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

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<sup>10</sup> *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).

<sup>11</sup> 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 3.700.2 and Exhibit 1 (January 2010).

<sup>12</sup> *D.L.*, Docket No. 20-0059 (issued July 8, 2020); *W.C.*, 59 ECAB 374 (2008); *Anna V. Burke*, 57 ECAB 521 (2006).

<sup>13</sup> 5 U.S.C. § 8107(c).

<sup>14</sup> *Id.*

<sup>15</sup> 20 C.F.R. § 10.404(b).

<sup>16</sup> *P.S.*, Docket No. 15-0682 (issued July 14, 2015); *D.J.*, Docket No. 11-1359 (issued February 24, 2012).

<sup>17</sup> *Supra* note 11 at Chapter 2.808.6(f) (March 2017); *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

Consistent with its procedures, OWCP properly referred the matter to a DMA for an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.<sup>18</sup>

Dr. Krohn, the DMA, issued a March 17, 2024 report and noted appellant's accepted condition of anal tear. He referred to the sixth edition of the A.M.A., *Guides*, and utilized Table 16-6 to find a Class 3 impairment with a default value of 16 correlating with 16 percent whole person impairment. Dr. Krohn explained that impairment for loss of bodily organs under FECA could therefore 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, he found 53 percent permanent impairment for anal disease. However, in a supplemental report dated May 19, 2024, Dr. Krohn reviewed FECA 5 U.S.C. § 8107(c)(22) as well as the listing of covered organs under FECA and opined that assignment of impairment for the anus is not included among the organs by which the percentage of impairment of a particular organ is assigned, not in terms of the whole person, but rather such impairments are converted to a percent impairment of the involved organ. Regarding appellant's diagnoses of rectal tear, he utilized Table 16-6, page 116, and determined that appellant had a Class 3 impairment, with a default value of 16 corresponding to 16 percent whole person impairment due to frequent moderate and occasionally severe symptoms of anal disease despite daily medication and other treatment. However, Dr. Krohn's reports are internally inconsistent, as he found that the anus was not included in the schedule, but then subsequently calculated a rating of 16 percent whole person impairment.

It is well established that, proceedings under FECA are not adversarial in nature and, while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>19</sup> Once OWCP undertook development of the evidence by referring appellant's case file to a DMA, it had an obligation to do a complete job and obtain a proper evaluation and report that would resolve the issue in this case.<sup>20</sup>

The case shall, therefore, be remanded for OWCP to refer the case record and a SOAF to a new DMA for clarification the extent of any permanent impairment of a scheduled member or function of the body. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>18</sup> See *S.C.*, Docket No. 20-0769 (issued January 12, 2021).

<sup>19</sup> See *W.W.*, Docket No. 18-0093 (issued October 9, 2018); *William J. Cantrell*, 34 ECAB 1233 (1983).

<sup>20</sup> See *P.T.*, Docket No. 21-0138 (issued June 14, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 22, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 1, 2025  
Washington, DC

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

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

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