

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 4, 2022² appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2022 she contracted COVID-19 while in the performance of duty. She related that her symptoms began on January 2, 2022, that she tested positive for COVID-19 on January 4, 2022, and that she was subsequently out sick for 16 days. Appellant stopped work on January 4, 2022 and returned on January 19, 2022. In support of her claim, appellant submitted a polymerase chain reaction (PCR) test result, dated January 4, 2022, indicating that she had tested positive for COVID-19.

By decisions dated February 22 and March 14, 2022, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of her alleged January 4, 2022 employment injury. It advised her that the denial of COP did not affect her entitlement to other compensation benefits.

On March 24, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On April 6, 2022 OWCP accepted appellant's claim for COVID-19.

On April 14, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award and for disability from work for the period January 4 through 19, 2022.³

In a June 27, 2022 development letter, OWCP requested that appellant submit an impairment evaluation from her physician addressing whether she had reached maximum medical improvement (MMI) and providing an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ It afforded her 30 days to submit additional medical evidence in support of her schedule award claim.

Thereafter, OWCP received a June 28, 2022 prescription note from Dr. Sadhna Alaigh, a Board-certified family practitioner, relating that appellant was treated on January 4 and 13, 2022 for COVID-19 and related symptoms.

² OWCP initially assigned appellant's February 4, 2022 claim OWCP File No. xxxxxx381. Thereafter, appellant filed a March 10, 2022 Form CA-1 for the same injury, to which OWCP assigned OWCP File No. xxxxxx357, the claim presently before the Board. In a May 2, 2022 letter, OWCP subsequently explained that it had created two separate cases for the same injury and that it had, therefore, administratively closed the duplicate case by deleting OWCP File No. xxxxxx381. It indicated that all documents from OWCP File No. xxxxxx381 had been moved into OWCP File No. xxxxxx357 and directed that all future correspondence be submitted under OWCP File No. xxxxxx357.

³ OWCP has not yet ruled on appellant's disability claim for the period January 4 through 19, 2022. As such, that issue is not currently before the Board on this appeal. 20 C.F.R. §§ 501.2(c)(2) and 501.3.

⁴ A.M.A., *Guides* (6th ed. 2009).

In a letter dated July 27, 2022, OWCP provided the employing establishment 20 days to comment prior to its Branch of Hearings and Review's issuance of a decision based on a review of the written record.

By decision dated September 30, 2022, 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.

On October 6, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was changed to a review of the written record.

By decision dated October 12, 2022, OWCP's hearing representative affirmed the March 14, 2022 denial of COP.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁵ and its implementing federal regulations⁶ 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 of loss of a member shall be determined. 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.⁷ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.⁸ 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.⁹

A claimant has the burden of proof under FECA to establish permanent impairment of a scheduled member or function of the body as a result of his or her employment injury entitling him or her to a schedule award.¹⁰ 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 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

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Part 3 -- *Medical, Schedule Awards*, Chapter 3.700.2, Exhibit 1 (January 2010).

⁹ *D.P.*, Docket No. 20-1330 (issued February 19, 2021); *D.S.*, Docket No. 18-1140 (issued January 29, 2019); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹⁰ *D.P.*, *id.*; *M.G.*, Docket No. 19-0823 (issued September 17, 2019); *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

percentage of impairment in accordance with the A.M.A., *Guides*.¹¹ 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.¹² 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.¹³

ANALYSIS -- ISSUE 1

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.

On April 14, 2022 appellant requested a schedule award. In a June 27, 2022 development letter, OWCP requested that she submit a permanent impairment evaluation from her physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant did not submit any medical evidence establishing permanent impairment.

Appellant submitted a June 28, 2022 prescription from Dr. Alaigh relating that she was treated on January 4 and 13, 2022 for a COVID-19 infection and related symptoms. Dr. Alaigh did not, however, find that she had permanent impairment due to her accepted employment injury, address whether she had reached MMI, or utilize the sixth edition of the A.M.A., *Guides*.¹⁴ This evidence is, therefore, insufficient to establish the claim.¹⁵

As noted above, appellant must submit an evaluation from a physician that includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁶ As she has not submitted any medical evidence supporting permanent impairment of a scheduled member or function of the body due to her accepted condition, the Board finds that she has not met her burden of proof.¹⁷

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.

¹¹ *Supra* note 8 at Chapter 2.808.5 (March 2017).

¹² *Id.* at Chapter 2.808.6a (March 2017).

¹³ *Id.* at Chapter 2.808.6c (March 2017).

¹⁴ *See K.J.*, Docket No. 19-1492 (issued February 26, 2020); *K.F.*, Docket No. 18-1517 (issued October 9, 2019).

¹⁵ *Id.*

¹⁶ *See D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

¹⁷ *See A.M.*, Docket No. 21-1413 (issued March 28, 2022).

LEGAL PRECEDENT -- ISSUE 2

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.¹⁸ This latter section provides that written notice of injury shall be given within 30 days.¹⁹ The context of section 8122 makes clear that this means within 30 days of the injury.²⁰

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.²¹

FECA Bulletin No. 21-09 at subsection II.2., however, provides that, "The FECA program considers COVID-19 to be a traumatic injury since it is contracted during a single workday or shift (*see* 20 C.F.R. § 10.5(ee)), and considers the date of last exposure prior to the medical evidence establishing the COVID-19 diagnosis as the Date of Injury since the precise time of transmission may not always be known due to the nature of the virus."²²

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision with regard to appellant's entitlement to COP.

As noted above, FECA Bulletin No. 21-09 at subsection II.2, provides that, "The FECA program considers COVID-19 to be a traumatic injury since it is contracted during a single workday or shift (*see* 20 C.F.R. § 10.5(ee)), and considers the date of last exposure prior to the medical evidence establishing the COVID-19 diagnosis as the Date of Injury since the precise time of transmission may not always be known due to the nature of the virus."²³

¹⁸ *Supra* note 1 at § 8118(a).

¹⁹ *Id.* at § 8122(a)(2).

²⁰ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

²¹ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

²² FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act of 2021 (ARPA) was signed into law. Pub. L. No. 117-2. OWCP issued FECA Bulletin No. 21-09 to provide guidance regarding the processing of COVID-19 FECA claims as set forth in the ARPA. Previously, COVID-19 claims under FECA were processed under the guidelines provided by FECA Bulletin No. 20-05 (issued March 31, 2020) and FECA Bulletin No. 21-01 (issued October 21, 2020). FECA Bulletin No. 21-09 supersedes FECA Bulletin Nos. 20-05 and 21-01.

²³ *Id.*

In denying appellant's claim for COP, OWCP failed to consider the date of last exposure as the date of injury in accordance with the guidance in FECA Bulletin No. 21 -09. This case will therefore be remanded for application of FECA Bulletin No. 21 -09 with regard to appellant's claim for COP.²⁴ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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. The Board further finds that the case is not in posture for decision with regard to appellant's entitlement to COP.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2022 decision of the Office of Workers' Compensation Programs is affirmed. The October 12, 2022 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: June 26, 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

²⁴ See *Order Remanding Case, K.C.*, Docket No. 22-1066 (issued December 23, 2022); *Order Remanding Case, T.S.*, Docket No. 22-0830 (issued December 19, 2022); *Order Remanding Case, G.C.*, Docket No. 21-1016 (issued September 27, 2022).