

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

A.M., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SAFETY)
ADMINISTRATION, FEDERAL AIR)
MARSHAL SERVICE, Coppell, TX, Employer)

**Docket No. 24-0899
Issued: June 26, 2025**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 6, 2024, appellant filed a timely appeal from a May 20, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include long COVID-19 as causally related to his accepted July 29, 2021 employment injury; and (2) 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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 4, 2021, appellant, then a 58-year-old a general inspection, investigation, and compliance agent, filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2021 when on assignment in Japan, he contracted COVID-19 while in the performance of duty. He stopped work on July 29, 2021. Appellant was released to return to work effective August 16, 2021. OWCP accepted the claim for COVID-19.

On April 26, 2023, appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support thereof, appellant submitted a March 8, 2023 report from Dr. John W. Ellis, a Board-certified emergency and family medicine specialist, who noted the accepted condition of COVID-19. He related that appellant was evaluated for a permanent impairment rating. Dr. Ellis reported that appellant's findings were consistent with long COVID due to lingering respiratory function impairment. He opined that appellant's present condition was a continuation of his accepted COVID-19 infection, and the acceptance of his claim should be expanded to include long COVID. Dr. Ellis noted that appellant had reached maximum medical improvement (MMI) as of the date of his evaluation. He referenced the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*² and indicated that appellant had 55 percent whole person permanent impairment rating. Dr. Ellis also found that appellant had 85 percent permanent lung impairment due to pulmonary dysfunction.

In a development letter dated July 31, 2023, OWCP informed appellant that the evidence of record was insufficient to establish his claim for a schedule award. It advised him of the type of evidence required to establish his claim and afforded him 30 days to submit the necessary evidence. No further evidence was received.

By decision dated September 11, 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 due to his accepted COVID-19 condition.

On October 3, 2023, OWCP received an August 24, 2023 report from Dr. Ellis who noted that appellant was evaluated for a permanent impairment rating for residual pulmonary impairment due to the accepted COVID-19 condition. Dr. Ellis requested that acceptance of appellant's claim be expanded to include long COVID-19, which he attributed to appellant's accepted COVID-19 infection. He recounted appellant's history of injury, medical history, and physical examination findings. Dr. Ellis explained that he recommended that the additional condition of long COVID-19 be accepted due to appellant's ongoing and lingering impairment of respiratory function that had occurred as a direct result of appellant's COVID-19 infection. He explained that appellant was currently negative for COVID-19, however, appellant did suffer from residual post COVID-19 syndrome, which is why he had asked that this additional condition be accepted as part of appellant's claim. Dr. Ellis again referenced the sixth edition of the A.M.A., *Guides*, and

² A.M.A., *Guides* (6th ed. 2009).

determined that appellant had an 85 percent permanent impairment of the lungs due to pulmonary dysfunction.³

On March 1, 2024, appellant requested reconsideration.

By decision dated March 14, 2024, OWCP vacated the September 11, 2023 decision which denied appellant's schedule award claim. It found that Dr. Ellis' March 8, 2023 report constituted *prima facie* medical evidence requiring additional development regarding the expansion of appellant's claim. Following additional development, a referral to a district medical adviser (DMA) or second opinion physician may be needed to determine appellant's entitlement to a schedule award.

In a letter dated April 2, 2024, OWCP requested that appellant submit a comprehensive medical report regarding his accepted COVID-19 condition during the period August 2021 through March 2023. It afforded appellant 30 days to provide the requested information.

OWCP thereafter received additional medical evidence. In a November 7, 2022 plethysmography report, Dr. E. Gonzalez-Ayala, Board-certified in internal and pulmonary medicine, interpreted appellant's pulmonary function studies as revealing severe airway obstruction, no restriction, increased airway resistance, and significant response to bronchodilator.

In a February 8, 2023 report, Dr. Sumeesh Dhawan, a Board-certified internist, diagnosed chronic obstructive pulmonary disease. OWCP also received a pulmonary dysfunction table.

By decision dated May 20, 2024, OWCP denied appellant's request for expansion of the acceptance of his claim to include long COVID-19, finding that the evidence of record was insufficient to establish causal relationship. It further 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 due to his accepted employment-related condition(s).

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.⁵ A physician's opinion on whether there is causal relationship between

³ *Id.*

⁴ *C.S.*, Docket No. 23-0746 (issued December 11, 2023); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *C.S.*, *id.*; *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁶ Additionally, the opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the claimant.⁷

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct. Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁸

ANALYSIS -- ISSUE 1

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

By decision dated March 14, 2024, OWCP found that Dr. Ellis' March 8, 2023 report constituted *prima facie* medical evidence requiring additional development regarding the expansion of appellant's claim. It noted, that following additional development, a referral to a DMA or second opinion physician may be needed to determine appellant's entitlement to a schedule award. OWCP, however, issued its May 20, 2024 denial of expansion without completing the required further development.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁹ OWCP has an obligation to see that justice is done.¹⁰

This case shall, therefore, be remanded for further development. On remand, OWCP shall refer appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to a specialist in the appropriate field of medicine for an evaluation and a well-rationalized opinion as to whether acceptance of appellant's claim should be expanded to include long COVID-19. If the physician opines that the claim should not be expanded, he or she must explain, with rationale, how or why their opinion differs from that of Dr. Ellis. Following this and

⁶ *C.S., id.; E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *C.S., id.; M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *J.M.*, Docket No 19-1926 (issued March 19, 2021); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

⁹ *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁰ *See A.D.*, Docket No. 21-0143 (issued November 15, 2021).

other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding the expansion of the acceptance of appellant's claim.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provisions of FECA¹¹ and its implementing regulations¹² 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. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹³

OWCP's procedures provide that all claims involving impairment of the lungs will be evaluated by first establishing the class of respiratory impairment, following the A.M.A., *Guides* as far as possible. Awards are based on the loss of use of both lungs and the percentage for the applicable class of whole person respiratory impairment will be multiplied by 312 weeks (twice the award for loss of function of one lung) to obtain the number of weeks payable in the schedule award.¹⁴

Although FECA does not specifically provide for compensation for whole person impairment, the measurement of lung function warrants special consideration. Table 5-4, *Pulmonary Dysfunction*, A.M.A., *Guides* page 88, provides whole person impairment ratings based on a designated Class (0-4) of impairment. Depending on the assigned class, the range of whole person impairment due to pulmonary dysfunction is 0 to 65 percent.

ANALYSIS -- ISSUE 2

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

As noted above, on March 14, 2024, OWCP vacated the September 11, 2023 decision, finding that Dr. Ellis' March 8, 2023 report constituted *prima facie* medical evidence requiring additional development regarding the expansion of appellant's claim. OWCP noted, that following additional development, a referral to a DMA or second opinion physician may be needed to determine appellant's entitlement to a schedule award. The Board notes that OWCP also received an August 24, 2023 report from Dr. Ellis, who related that appellant was evaluated for a permanent impairment rating for residual pulmonary impairment due to the accepted COVID-19 condition. He opined that appellant's present condition was a continuation of his accepted COVID-19 infection, and the acceptance of his claim should be expanded to include long COVID-19. Dr. Ellis found that appellant had reached MMI as of the date of his evaluation. He referenced the sixth

¹¹ U.S.C. § 8107.

¹² 20 C.F.R. § 10.404.

¹³ 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).

¹⁴ *Id.* at Chapter 2.808.5c(1).

edition of the A.M.A., *Guides* and indicated that appellant had 55 percent whole person permanent impairment rating. Dr. Ellis further found that appellant had 85 percent permanent lung impairment due to pulmonary dysfunction. However, after receipt of the reports from Dr. Ellis regarding appellant's permanent impairment, OWCP failed to further develop appellant's schedule award claim.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁵ OWCP has an obligation to see that justice is done.¹⁶

This case shall, therefore, be remanded for further development. On remand, OWCP shall refer appellant, along with the medical record, a SOAF, and a series of questions to a specialist in the appropriate field of medicine for an evaluation and a well-rationalized opinion as to whether appellant has permanent impairment of a scheduled member or function of the body due to his accepted employment-related condition(s). If the physician opines that appellant has no permanent impairment warranting a schedule award, he or she must explain, with rationale, how or why their opinion differs from that of Dr. Ellis. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's schedule award claim.

CONCLUSION

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

¹⁵ See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ See *A.D.*, Docket No. 21-0143 (issued November 15, 2021).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2024 decision of the Office of Workers' Compensation Programs is set aside. 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