

³ The Board notes that following the November 17, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly determined appellant's pay rate for schedule award purposes.

FACTUAL HISTORY

On July 2, 2005 appellant, then a 51-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on July 1, 2005 he injured his left ankle, left knee, and upper and lower back when he fell into a pothole while in the performance of duty. He stopped work that day. OWCP accepted the claim for sprain of ligaments of lumbar spine; sprain of unspecified ligaments of left ankle; sprain of medial collateral ligament of left knee; sprain of back, lumbar region; contusions of multiple sites; sprain of unspecified sites, knee and leg; and sprain of left ankle. Appellant returned to full-duty work on August 5, 2005.

On June 12, 2013 Dr. Nicholas Diamond, a physiatrist, noted the history of appellant's work-related injury. He referenced the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁴ and found two percent permanent impairment of the left lower extremity. Dr. Diamond opined that appellant had reached maximum medical improvement (MMI) on June 12, 2013.

On August 6, 2013 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On August 18, 2013 Dr. Henry J. Magliato, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), concurred with Dr. Diamond's finding of two percent permanent impairment of the left lower extremity. He opined that appellant had reached MMI on June 12, 2013, the date of Dr. Diamond's impairment evaluation.

By decision dated October 25, 2013, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity. The period of the award ran for 5.76 weeks from the date of MMI, June 12, 2013, until July 22, 2013. OWCP found an effective pay rate date of July 1, 2005. The pay rate utilized by OWCP was based on the weekly rate of \$945.93 with augmented (3/4 or 75 percent) weekly compensation of \$709.45, and appellant's weekly compensation of \$709.45 was unchanged as cost-of-living adjustments (COLAs) were not applicable.

In a May 14, 2025 report, Dr. James Brien, a Board-certified anesthesiologist, utilized the A.M.A., *Guides* and opined that appellant had 52 percent permanent impairment of the left lower extremity. As appellant had previously been awarded 2 percent permanent impairment left lower extremity, he recommended that appellant be granted an additional schedule award for 50 percent permanent left lower extremity impairment. Dr. Brien concluded that appellant's date of MMI was May 14, 2025.

On July 1, 2025 appellant filed a Form CA-7 for an increased schedule award.

⁴ A.M.A., *Guides* (6th ed 2009).

On August 20, 2025 Dr. William Tontz, Jr., a Board-certified orthopedic surgeon, serving as OWCP's DMA, concurred with Dr. Brien's impairment rating that appellant was entitled to an additional 50 percent permanent impairment, for a total permanent impairment of the left lower extremity of 52 percent. He opined that appellant reached MMI on May 14, 2025, the date of Dr. Brien's impairment evaluation.

By decision dated November 17, 2025, OWCP granted appellant a schedule award for an additional 50 percent permanent impairment of the left lower extremity (a total of 52 percent permanent impairment of the left lower extremity). The period of the award ran for 144.00 weeks from the date of MMI, May 14, 2025, to February 15, 2028.⁵ OWCP found an effective pay rate date of July 1, 2005, and that appellant's weekly compensation of \$945.93 at the augmented (3/4) rate equaled \$709.45. The weekly compensation payments remained at \$709.45 as COLA adjustments were not applicable.

LEGAL PRECEDENT

Under FECA, monetary compensation for disability or impairment due to an employment injury is paid as a percentage of the monthly pay rate.⁶ Section 8101(4) provides that "monthly pay" means the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.⁷ The compensation rate for schedule awards is the same as compensation for wage loss.⁸ When there is no prior injury-related disability, OWCP's procedures indicate that the pay rate date is the date of injury (DOI).⁹

When an injury does not result in disability, but compensation is payable for permanent impairment, a beneficiary is eligible for COLAs under section 8146a of FECA where the award for such impairment began more than one year prior to the date the COLA took effect.¹⁰ OWCP's procedures provide that, "[w]here the schedule award represents the first payment for compensable disability, the claimant's entitlement to [COLAs] does not begin until one year after the award begins."¹¹ Its procedures additionally indicate that when a claimant has no disability for work before the date of MMI, "the one-year waiting period begins on the starting date of the award.

⁵ The case record establishes that OWCP paid appellant only schedule award compensation. No wage-loss compensation for disability from work was paid.

⁶ See 5 U.S.C. §§ 8105-8107.

⁷ *Id.* at § 8101(4); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.5c (September 2011).

⁸ See *L.B.*, Docket No. 25-0165 (issued January 21, 2025); *S.K.*, Docket No. 20-0422 (issued December 2, 2020); *K.H.*, 59 ECAB 495 (2008).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.5c (September 2011); see also *E.F.*, Docket No. 23-0505 (issued October 11, 2024); *S.K.*, Docket No. 20-0422 (issued December 2, 2020).

¹⁰ 20 C.F.R. § 10.420(b).

¹¹ *E.F.*, *supra* note 9.

This date represents the claimant's first entitlement to compensation, even though the effective date of the pay rate DOI is earlier."¹²

ANALYSIS

The Board finds that OWCP properly determined appellant's pay rate for schedule award purposes.

As noted above, OWCP's procedures provide that the pay rate date for schedule awards, where there is no prior disability, is the DOI.¹³ The case record establishes that OWCP has not paid appellant wage-loss compensation for any disability due to his accepted July 1, 2005 employment injury. Consequently, appellant's pay rate date for schedule award purposes was his DOI pay rate (*i.e.*, his pay rate as of July 1, 2005). The Board thus finds that OWCP used the appropriate pay rate date in determining appellant's 2025 schedule award.

Counsel contends that appellant was entitled to COLAs for the intervening years since his initial schedule award in 2013. However, as the 2025 schedule award did not begin more than one year prior to the date the COLA took effect, OWCP properly determined COLA adjustments were not applicable in determining his pay rate for schedule award purposes.¹⁴

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 OWCP properly determined appellant's pay rate for schedule award purposes.

¹² *Id.*

¹³ *Supra* note 10.

¹⁴ *See E.F. and S.K., supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2026
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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