

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

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D.A., Appellant )

and )

DEPARTMENT OF COMMERCE, BUREAU )  
OF THE CENSUS, Jeffersonville, IN, Employer )

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**Docket No. 13-1778  
Issued: February 4, 2014**

*Appearances:*  
Lonnie Boylan, for the appellant  
Office of Solicitor, for the Director

*Case submitted on the record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 23, 2013 appellant, through her representative, filed a timely appeal from a February 1, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

**ISSUE**

The issue is whether appellant met his burden of proof to establish a permanent impairment caused by his accepted conditions that entitle him to a schedule award.

**FACTUAL HISTORY**

On April 1, 2008 appellant, then a 61-year-old inkjet printer operator, filed an occupational disease claim alleging that his repetitive work duties caused an injury to his right hand and fingers. He did not stop work. On July 2, 2008 OWCP accepted the claim for right trigger finger, bilateral carpal tunnel syndrome and lesion of the ulnar nerve. Appellant

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

underwent an authorized left carpal tunnel and cubital tunnel release on October 30, 2008 performed by Dr. Tuna Ozyurekoglu, an orthopedic surgeon. OWCP paid appropriate compensation benefits.

On September 6, 2012 appellant's representative filed a claim for a schedule award. On September 11, 2012 OWCP received treatment notes from Dr. Ozyurekoglu. In his July 6, 2010 notes, counsel advised that appellant had improved with numbness and tingling but continued having pain and triggering on both sides of the hand. Dr. Ozyurekoglu examined appellant and found that he was tender on the middle finger A1 pulley on both sides. He opined that appellant reached maximum medical improvement and could return to regular duty. Dr. Ozyurekoglu opined that appellant did not have any impairment. Other treatment notes reported symptoms and findings but did not address permanent impairment.

By letter dated September 13, 2012, OWCP acknowledged appellant's claim for a schedule award. It explained that he should obtain a report from his treating physician, and provide an evaluation of permanent impairment, utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6<sup>th</sup> ed. 2008) (A.M.A., *Guides*).

Appellant submitted another copy of treatment notes from Dr. Ozyurekoglu. This included a September 19, 2012 treatment note in which Dr. Ozyurekoglu related that appellant did not want further treatment on the right side and was at maximum medical improvement. Dr. Ozyurekoglu advised that appellant did "not have any permanent impairment on the left or right side related to his work injuries."

On February 1, 2013 OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record did not support a permanent impairment to a scheduled member or function of the body.

### **LEGAL PRECEDENT**

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>2</sup>

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.<sup>3</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>4</sup> The A.M.A., *Guides* has been adopted by the implementing regulation as the

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<sup>2</sup> *Veronica Williams*, 56 ECAB 367 (2005).

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

appropriate standard for evaluating schedule losses.<sup>5</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.<sup>6</sup>

### ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award.

OWCP accepted appellant's claim for right trigger finger, bilateral carpal tunnel syndrome and lesion of the ulnar nerve. It also authorized an October 30, 2008 left carpal tunnel and cubital tunnel releases. Appellant claimed a schedule award on September 6, 2012. However, he did not submit any evidence from a physician finding that he had permanent impairment of a scheduled body member, caused or aggravated by his accepted conditions and which followed the A.M.A., *Guides*, in rating permanent impairment. Although OWCP had specifically requested that appellant obtain such information from his physician no such information was received.

The only medical evidence received, was comprised of treatment notes from appellant's physician. In his September 19, 2012 note, Dr. Ozyurekoglu opined that appellant did "not have any permanent impairment on the left or right side related to his work injuries." Appellant did not submit any other medical evidence supporting that he had a permanent impairment and was entitled to a schedule award, under the sixth edition of the A.M.A., *Guides*, for a scheduled member of the body under FECA. Accordingly, the Board finds that he has not established entitlement to a schedule award.

On appeal, counsel argued that Dr. Ozyurekoglu provided findings that could be a basis for an impairment rating. However, as noted above, Dr. Ozyurekoglu in a series of medical reports from July 2010 to September 2012 opined that appellant did not have any permanent impairment related to his work injuries.

Appellant may request a schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he was entitled to a schedule award.

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<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board