

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

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**R.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Houston, TX, Employer**

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**Docket No. 12-35  
Issued: May 11, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 12, 2011 appellant filed a timely appeal from the July 8, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her schedule award claim. 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 this case. The Board also has jurisdiction to review OWCP's August 12, 2011 nonmerit decision denying reconsideration.

**ISSUES**

The issues are: (1) whether appellant has a compensable permanent impairment as a result of her accepted employment injury; and (2) whether OWCP properly denied her July 19, 2011 reconsideration request pursuant to section 8128(a) of FECA.

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

## **FACTUAL HISTORY**

On May 5, 2008 appellant, a 44-year-old mail handler, filed an occupational disease claim alleging that the pain in her right shoulder acromioclavicular joint was a result of performing the duties of her position, which included emptying sacks and crab cages and moving the bar back and forth on the dumper. OWCP accepted her claim for sprain of the right shoulder and upper arm, unspecified site.

On July 27, 2010 appellant underwent an authorized right shoulder arthroscopic rotator cuff repair, subacromial decompression and distal clavicectomy. The postoperative diagnosis was right shoulder rotator cuff tear and impingement.

The attending Board-certified orthopedic surgeon, Dr. Marcos V. Masson, reported on February 7, 2011 that appellant should be at maximum medical improvement (MMI) in the next four weeks. On April 4, 2011 he found that appellant was at functional MMI and would obtain an impairment rating. Under work status, however, he noted, as he had in previous reports: "N/A No MMI."

Appellant claimed a schedule award. OWCP notified her that when she reached MMI, she was responsible for submitting a physician's report establishing permanent impairment to her right upper extremity.

On May 13, 2011 Dr. Masson offered a right upper extremity impairment rating of 10 percent based on loss of shoulder motion. On June 8, 2011, however, he noted once again that appellant's work status was "N/A No MMI."

An OWCP medical adviser reviewed the medical record and agreed with Dr. Masson's impairment rating for the right upper extremity. He noted, however, that Dr. Masson later reported appellant's work status as "N/A No MMI." The medical adviser asked OWCP to please confirm whether MMI was, in fact, the date of the impairment evaluation.

In a July 8, 2011 decision, OWCP denied appellant's schedule award claim. It noted that it had informed appellant of the evidence needed to support her claim, but "an impairment rating was not received from you or your doctor."

Appellant requested reconsideration, but OWCP denied that request on August 12, 2011. OWCP noted that appellant submitted no new evidence.

On appeal, appellant argues that OWCP did not properly develop the evidence.

## **LEGAL PRECEDENT -- ISSUE 1**

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.<sup>2</sup> Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards

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<sup>2</sup> 5 U.S.C. § 8107.

set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>3</sup>

Only permanent impairment may be rated according to the A.M.A., *Guides*, and only after the status of “[m]aximum [m]edical [i]mprovement” is determined. Impairment should not be considered permanent until a reasonable time has passed for the healing or recovery to occur. This will depend on the nature of underlying pathology, as the optimal duration for recovery may vary considerably from days to months. The clinical findings must indicate that the medical condition is static and well stabilized for the person to have reached MMI.<sup>4</sup>

A request for medical information from the attending physician may be the most efficient and expeditious means to obtain a medical status update and address any unresolved medical issues. OWCP must ensure, however, that the attending physician’s reply is well reasoned and responsive to the questions asked. The quality of the attending physician’s reports will vary greatly. Sometimes reports are lacking in detail because the physician is unaware of the type of information required to meet OWCP standards in a given case. If reports from the attending physician lack needed details and opinion, or if the subjective complaints and time loss from work appear inconsistent with the objective findings and the claimant’s diagnosis, OWCP can write back to the physician, clearly state what is needed, and request a supplemental report. Development for a schedule award may also prompt an inquiry to the attending physician regarding the extent of permanent impairment and date of MMI.<sup>5</sup>

OWCP will consider all evidence submitted appropriately.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

OWCP denied appellant’s schedule award claim because an impairment rating was not received from appellant or her doctor. The record, however, shows that appellant’s orthopedic surgeon, Dr. Masson, signed an impairment rating on May 13, 2011, one that calculated a 10 percent right upper extremity impairment based on loss of shoulder motion. Indeed, OWCP’s medical adviser reviewed this impairment rating and agreed with the calculation. To the extent that OWCP did not consider all the evidence submitted, its July 8, 2011 decision denying appellant’s schedule award claim must be set aside and the case remanded for proper consideration of the evidence.

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<sup>3</sup> 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

<sup>4</sup> A.M.A., *Guides* 24 (6<sup>th</sup> ed. 2009); see *Orlando Vivens*, 42 ECAB 303 (1991) (a schedule award is not payable until maximum medical improvement -- meaning that the physical condition of the injured member of the body has stabilized and will not improve further -- has been reached).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating the Medical Evidence*, Chapter 2.810.7.b (September 2010).

<sup>6</sup> 20 C.F.R. § 10.119.

Further, there appears to be no disagreement between Dr. Masson and OWCP's medical adviser on the nature and extent of appellant's impairment. The only outstanding issue is whether appellant had reached MMI at the time of the impairment evaluation. The narrative portions of Dr. Masson's reports indicate that appellant was at MMI, but a continuing notation for work status has prompted a question for the attending physician. On remand, OWCP shall obtain clarification from Dr. Masson on the date of MMI. After such further development as may be required, OWCP shall issue an appropriate *de novo* decision on appellant's schedule award claim.<sup>7</sup>

### **CONCLUSION**

The Board finds that this case is not in posture for determination. Further development of the medical evidence is warranted.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 12 and July 8, 2011 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: May 11, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> As the case is being remanded for a merit review and a *de novo* decision on appellant's entitlement to a schedule award, the second issue presented on appeal, whether OWCP properly denied a merit review on August 12, 2011, has become moot.