



## **FACTUAL HISTORY**

On January 23, 2019 appellant, then a 56-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2019 she injured her left kneecap when she slipped and fell on ice on the pavement while walking to a vehicle at work. She stopped work on January 23, 2019. On February 28, 2019 OWCP accepted appellant's claim for sprain of the medial collateral ligament of the left knee, initial encounter.

On February 7, 2020 appellant filed a claim for a schedule award (Form CA-7).

OWCP, in a development letter dated February 18, 2020, requested that appellant submit a report from her attending physician, which addressed whether she had reached maximum medical improvement (MMI) and, if so, to evaluate permanent impairment in accordance with the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> It afforded her 30 days to submit the requested information. No additional evidence was received.

By decision dated April 13, 2020, OWCP denied appellant's claim for a schedule award, finding that she had not established permanent impairment of a scheduled member or function of the body in accordance with the A.M.A., *Guides*. It noted that she had not responded to its February 18, 2020 request for medical evidence, including an impairment evaluation. OWCP concluded, therefore, that the requirements had not been met to establish entitlement to a schedule award.

On an appeal request form dated and received by OWCP on May 22, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She submitted additional medical evidence along with her request.

By decision dated June 5, 2020, OWCP denied appellant's hearing request. It found that the request was untimely filed as it was received *via* the Employees' Compensation Operations & Management Portal on May 22, 2020, more than 30 days after its April 13, 2020 merit decision. After exercising its discretion, OWCP further found that the issue in the case could equally well be addressed through the reconsideration process.

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

The schedule award provisions of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> 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 under the law for all claimants, OWCP has adopted the A.M.A.,

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

*Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.<sup>6</sup>

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.<sup>7</sup> 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 percentage of impairment in accordance with the A.M.A., *Guides*.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

### **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.

In a development letter dated February 18, 2020, OWCP informed appellant of the type of evidence necessary to establish her schedule award claim and specifically requested that she submit a report which included a permanent impairment evaluation from her attending physician in accordance with the sixth edition of the A.M.A., *Guides*. It afforded her 30 days to submit an impairment evaluation.

Appellant did not respond to the February 18, 2020 development letter prior to issuance of OWCP's April 13, 2020 decision. As previously noted, she has the burden of proof to establish permanent impairment of a scheduled member or function of the body.<sup>11</sup> The medical evidence must include a description of any permanent impairment in sufficient detail that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its

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<sup>5</sup> *Id.* at § 10.404(a); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> *T.K.*, Docket No. 19-1222 (issued December 2, 2019); *J.D.*, Docket No. 18-0034 (issued May 22, 2018); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>8</sup> *Supra* note 6 at Chapter 2.808.5 (March 2017).

<sup>9</sup> *Id.* at Chapter 2.808.6(a) (March 2017).

<sup>10</sup> *Id.* at Chapter 2.808.6(c) (March 2017).

<sup>11</sup> *See supra* note 7.

resulting restrictions and limitations.<sup>12</sup> Appellant failed to provide such evidence and thus has not met her burden of proof.<sup>13</sup>

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 impairment.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that “a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary.”<sup>14</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>15</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier’s date marking and before the claimant has requested reconsideration.<sup>16</sup> Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant’s request and must exercise its discretion.

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant’s request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).

OWCP’s regulations provide that the request for an oral hearing must be made within 30 days of the date of the decision for which a review is sought.<sup>17</sup> On an appeal request form dated May 22, 2020, appellant requested an oral hearing regarding OWCP’s April 13, 2020 denial decision. As the request form was received by OWCP’s Branch of Hearings and Review more than 30 days after the issuance of the April 13, 2020 decision, the Board finds that appellant’s request for a hearing was not timely filed. Therefore, OWCP properly found in its June 5, 2020

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<sup>12</sup> See *supra* note 6; see also *D.P.*, Docket No. 19-0964 (issued October 2, 2019); *D.T.*, Docket No. 17-0102 (issued April 13, 2017).

<sup>13</sup> See *D.P.*, *id.*; *J.D.*, *supra* note 7; *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

<sup>14</sup> 5 U.S.C. § 8124(b)(1).

<sup>15</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>16</sup> *Id.* at § 10.616(a).

<sup>17</sup> *Id.*

decision that appellant was not entitled to an oral hearing as a matter of right because her request was not made within 30 days of its April 13, 2020 decision.<sup>18</sup>

Although appellant's May 22, 2020 request for a hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.<sup>19</sup> The Board finds that OWCP properly exercised its discretion in the June 5, 2020 decision by determining that the issue in the case could be equally well addressed by a request for reconsideration before OWCP along with the submission of new evidence relevant to the issue at hand.

The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>20</sup> The Board finds that OWCP did not abuse its discretion by denying appellant's request for an oral hearing and thus it properly denied his oral hearing request as untimely filed pursuant to 5 U.S.C. § 8124(b).<sup>21</sup>

### **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 OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).

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<sup>18</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *R.W.*, Docket No. 13-0044 (issued February 22, 2013); *A.L.*, Docket No. 09-1851 (issued March 9, 2010); *F.W.*, Docket No. 08-0722 (issued August 7, 2008).

<sup>19</sup> *R.H.*, Docket No. 19-1488 (issued February 20, 2020).

<sup>20</sup> *Id.*

<sup>21</sup> *See J.O.*, Docket No. 17-0789 (issued May 15, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 5 and April 13, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 1, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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